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ASSEMBLY INTERIM COMMITTEE ON
GOVERNMENTAL EFFICIENCY AND ECONOMY

HEARING [cont] ~~IN~~ LOS ANGELES
Tuesday, November 20, 1962

~~SUBJECTS~~: AB 3125, AB 2011, HR 209, HR 440, HR 274, AB 2341, Subdivision Map Act.

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MEMBERS OF COMMITTEE:

Lester A. McMillan, Chairman; John T. Knox, Vice Chairman; Clark L. Bradley; Ronald B. Cameron; Lou A. Cusanovich; Edward E. Elliott; Richard T. Hanna; Joseph M. Kennick; Harold K. Levering; John A. O'Connell; John C. Williamson

CONSULTANT: Maxwell Miller SECRETARY: Teddy B. Wilcox

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ASSEMBLY INTERIM COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY
HEARING IN LOS ANGELES, STATE BUILDING, ROOM 1138, 107 S. BROADWAY

Tuesday, November 20, 1962

SUBJECTS: AB 3125 (Meyers-1961) Defective work performance by Contractors
AB 2011 (Kilpatrick-1961) Information to be furnished by Building Departments re residential buildings
HR 209 (Collier-1961) Notice of building safety requirements to prospective purchasers
HR 440 (Hawkins-1961) Efficiency and Economy in Governmental Operations and Services (Discount to State Employees on Airlines and in Hotels)
HR 274 (McMillan-1961) Major Appliance Repair
AB 2341 (Rees-1961) Property Appraisers
Subdivision Map Act

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ASSEMBLY INTERIM COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY

HEARING IN LOS ANGELES, Tuesday, November 20, 1962

SUBJECTS: H. R. 440 - Discount to State Employees on Airlines

AB 2011 and HR 209 - Building Safety Information

HR 274 - Major Appliance Repair

AB 2341 - Property Appraisers

Subdivision Map Act

CHAIRMAN McMILLAN: The meeting will come to order. Ladies and gentlemen, this is a continuation of the meeting of the Governmental Efficiency and Economy Committee. We met here yesterday on the matter of Marriage Counseling and today we're meeting to take up bills dealing with contractors and airlines and with building safety information, and with licensing of major appliance repair men. Although Assembly Bill 3125 by Mr. Meyers dealing with Defective Work by Contractors is on the agenda, the author has asked me to announce that this bill which was introduced by Assemblyman Meyers at the request of the Governor's office, has been withdrawn at the request of the Governor.

I would like to introduce the members of the Assembly who are here this morning. On my extreme left is Assemblyman Clark Bradley from San Jose, who is now State Senator, or will be after the first of the year. Next to him is Lou Cusanovich from the Valley, and at my right is Harold Levering from Santa Monica, and Max Miller, the Consultant to the Committee and Mrs. Wilcox, the Secretary, and my name is McMillan. Mr. Martin is the Sergeant-at-Arms, and Joe Tracy is running the machine.

Now we are going to take up the first bill this morning, a little out of order. We will take up the bill by Assemblyman Meyers, AB 3125, and the first witness will be the Registrar of Contractors for the State of California, Leo Hoschler. Will you state your name?

HOSCHLER: My name is Leo B. Hoschler. I am the Registrar of Contractors State License Board, State of California.

McMILLAN: Did you want to address yourself to the bill before us, AB 3125 by Mr. Meyers?

HOSCHLER: Yes. My attention was called to this bill some time ago and inasmuch it would be the Contractors' State License Board that would be charged with any disciplinary actions filed under this proposal should it become law --

McMILLAN: Mr. Hoschler, will you explain to the committee what this bill is?

HOSCHLER: This bill, in effect, is to make performance by a contractor subject to disciplinary action, even though he performs a construction project in accordance with plans and specifications, and should it then be determined that there was inferior work or defective work that might be described as materially defective. That is the best way I can describe the bill, I think. May I comment? First, as the Registrar of Contractors, and having had 15 years' experience in the filing of accusations, and in the appearing in disciplinary proceedings against contractors'licenses, I feel that the principle involved here is good. What they propose is in effect, good, the end result. However, as the Registrar, I feel that this is already covered by existing sections of law, and I refer to Section 7109 of the Business and Professions Code, that presently makes wilful disregard or disregard of plans and specifications in any material respect, prejudicial to an owner, it calls for disciplinary action. We have used it for years successfully and widely in accusations, even though by implications we were forced to probably prove defective work or inferior workmanship. It is also covered in part by Section 7113 of the Business and Professions Code, another section of law, making a cause for disciplinary action any modification of a contract, and as people in the construction industry are well aware, most any building contract calls for work to be performed in a good and workmanlike manner, and even in an oral contract it is

implied that work will be performed in a good and workmanlike manner, in conformance with codes, regulations, to standards of a trade acceptable within an area. Further, we also have in the past, and presently, gotten to this problem in another section, 7116, the performance by a contractor of a wilful act, making a cause for disciplinary action. We have used it successfully. And another widely used, Section 7110, where a disregard or violation of any local or state building code, any building code, constitutes a cause for disciplinary action. Therefore I believe that we have already covered this particular area in which this proposal is designed for. Further, should this proposal in its present form be written into the law, it would impose upon the contractor an obligation generally not considered as his, that would probably be being an engineer and an architect at the same time, being responsible for hidden defects in the plans or specifications. He could become subject to civil actions, putting his license in jeopardy, if he didn't find these defects or was not aware of them. Also, if he would become aware and make corrections, which would constitute a deviation from the plans and specs he would therefore become subject to civil action, disciplinary action, so regardless of what he would do, he could not really meet conditions that were desired, by this particular proposal. We all are aware, I believe, not only those in the construction industry but outside of it, of the damage, misery, dealt to the general public by the unscrupulous contractor who does perform inferior work, defective work, and so therefore the proposal in its desired attainment is good, but I do feel that very possibly by a slight amendment to an existing section of law, we could right in to 7109 of the Business and Professions Code, and spell out the very thing that is desired here. We could do it simply by, perhaps, including within that section of law, the words making it a cause for disciplinary action, fitting it in, in any case where the work performed was not acceptable to trade standards within a particular area,

or was inferior in quality. That is just talking something in as a suggestion that I believe as the Registrar, could be very well done.

McMILLAN: Let me get one thing straight. Under the present law, the contractor is absolved of liability if he follows the specifications, isn't he?

HOSCHLER: Not entirely, Mr. Chairman. We have had many cases where we have brought accusations against a contractor where he had substantially complied with the plans and specifications, but in doing so, if the specifications had not spelled it out, he had probably performed inferior type work, or defective work, or work not acceptable to the particular trade, and so there is a question there. Simply because a man performs according to a plan and specifications, that he has performed the work properly. Where most of the damage in the building industry is done in this area is in the home building field, I believe. Most of our disciplinary actions take place in the home building field. And more often than not, particularly in the remodeling field, there are no plans and specifications that are detailed as working drawings. You build as you go. They are subject to change, and it isn't unusual that an owner will -- in fact, it's very common -- file complaints with our agency alleging deviations from plans and specifications, wherein the man has not maybe performed defective work, poor workmanship, but where actually the work is good and in the best interests of the owner, but that it did constitute a deviation. So it's very difficult to say that simply because a contractor complies with plans and specifications that he is not subject to not only a civil action, but he is also may --

McMILLAN: If he does his work in a good workmanlike manner and uses the proper materials and he follows the specifications, is the contractor responsible for any defects in those specifications? Suppose they have been submitted to him by an engineer or an architect.

HOSCHLER: He might be enjoined or he might be subject to some civil

suit, but I think it would be a matter of proof, Mr. Chairman. If a complaint were made to us and we discovered these facts in the investigation, we certainly wouldn't bring any action against the license. I will say this, that we have filed accusations against contractors' licenses and he had to defend his license to continue as a contractor, where it has been shown at hearings that what he did was actually in the interest of the owner. He has made changes from the plans and specifications, slight changes, but the owner objected that it was a change he didn't want, and the man was in jeopardy, not only from the standpoint of his license, but from a civil action.

McMILLAN: Well, Meyers' bill would place an added responsibility upon the contractor.

HOSCHLER: I believe it would place an impossible responsibility on the contractor, the way it is presently written. No matter what he would do he would be subject to some action.

McMILLAN: What is your opinion of this proposed legislation?

HOSCHLER: As I said in the first instance, the first thing today in my opening statement, I believe that this is already covered in our existing disciplinary sections. However, I do think that there is at least one section of our law that could be amended to spell out what they desire here, and it would certainly make our road a little easier, where we now have to prove by implication, you could spell it out, you could do it easier, and it might, and it should do what they have proposed here.

McMILLAN: When a man is licensed as a contractor, is he bonded?

HOSCHLER: It is not a prerequisite to getting a contractors' license. At present we do not even require a financial statement from a man getting a license. There is no bond required. The only bond required of a contractor today could be under the Home Improvement Bill, a new piece of legislation, with which we have not worked out the bonding

problems.

McMILLAN: What recourse does a man have if he entrusts his funds with a contractor? Only a civil action?

HOSCHLER: Yes. The only recourse he has, perhaps, is a civil action, if he is looking for real relief. Other than that, a complaint filed with the Contractors License Board might result in a disciplinary action and the man's license being suspended or revoked, but that certainly doesn't recompense the man for money loss.

McMILLAN: Do you have many complaints in your office where people pay their money to a contractor and he absconds with the money?

HOSCHLER: We have hundreds over the years. That has constituted generally one of our largest sources of complaints, people paying in money and getting nothing in return.

McMILLAN: You have had that many instances.

HOSCHLER: Many instances. We have filed with us approximately 13,000 complaints a year, of all types. The majority of these complaints take in workmanship, deviation from plans and specifications, and we find that where we find one, we generally find the other. Or we find a contractor that is cutting.

McMILLAN: Don't you feel that there is some need for legislation, then, to protect the public?

HOSCHLER: I am quite sure, I'm speaking for the men in the agency who are confronted with these problems administratively, I certainly feel very strongly that is so.

McMILLAN: Have you ever sponsored any or recommended any legislation?

HOSCHLER: I have certainly never sponsored any, Mr. Chairman, but I believe it is fairly well known within the industry and my acquaintances that I would be in favor of some more protection to the public than is now afforded.

McMILLAN: You would have a criminal action against the contractor,

I suppose, wouldn't you?

HOSCHLER: I don't know, except we do not at this time, only if he is operating without a contractors' license.

McMILLAN: Assuming he is operating with a contractor's license, and he has taken $10,000 of money to build a home or a building, and he takes the $10,000 to Las Vegas instead of building the building. What recourse does he have?

HOSCHLER: Absolutely none, Mr. Chairman. We have had it happen. Our records have many instances of where this has actually happened, where people have invested their life savings, made loans, and absolutely lost it, got nothing in return. No criminal action, I think we work with district attorneys and --

McMILLAN: Has it been referred to the District Attorney's office?

HOSCHLER: In most cases, yes.

McMILLAN: And because they are contractors, isn't that considered a trust?

HOSCHLER: That is generally considered a trust, but I think, and I certainly can't speak the law on it, but I believe it has been held that the contractor has control of the funds that are turned over to him on a contractual basis.

McMILLAN: Do you feel that there are a lot of people that are being clipped by contractors today?

HOSCHLER: I don't think there is any doubt about it. I think it is generally known that it is true.

McMILLAN: From your experience, then, would you recommend some bonding of contractors?

HOSCHLER: I would hesitate to use the word bonding, but I certainly think there should be some financial responsibility or reliability of these men who become licensed contractors and with which the public are being forced to contract and have no other protection except the civil

action, in too many cases, of no value to them.

McMILLAN: Your only recourse would be to revoke the license.

HOSCHLER: That is right. We revoke a lot of them on that basis. We revoked last year, I think 800 and some licenses, the majority of them on financial irresponsibility or financial failure.

McMILLAN: Well, that isn't contained in this bill, I don't think, anything about licensing -- I just wanted -- or about bonding -- I just wanted to ask your opinion on it.

HOSCHLER: I would hesitate to say it should be a bonding law, because I believe that the industry itself is concerned with this problem, very much so, and the able representatives of the industry are trying to work out these problems.

McMILLAN: Would it give the public more protection if the funds paid over to a contractor were declared to be a trust fund?

HOSCHLER: In my opinion, it certainly would seem as though -- call it a trust fund, or anything it might be, that that builder or that contractor doesn't have complete responsibility -- can do what he sees fit with those funds. I think in many places in California today they are successfully handling that problem under escrow accounts, voucher methods of distributing monies.

McMILLAN: Do you have any other comments you want to make on that bill?

HOSCHLER: No, I don't. I will say that this is something I have appeared on before, before another committee, and I said precisely or very much the same as I said this morning, and I speak from experience.

BRADLEY: Mr. Hoschler, it is perfectly possible to bond a contractor for faithful performance, isn't it?

HOSCHLER: Right, sir.

BRADLEY: And this is the general practise to protect an individual if he is having construction done at the present time.

HOSCHLER: I don't know that it is the general practise, I would say.

BRADLEY: Nowadays, if anybody has a substantial amount of construction to do, if he doesn't get a faithful performance bond out of the contractor, he has rocks in his head, hasn't he?

HOSCHLER: That may be, but I believe that people today still put a lot of trust in a contractor, and when they make a contract with him, they do so, trusting that he is going to perform, and I think you would find that it is not the general practise, it's just the opposite. The majority of contracts made right today in the state of California, in the home building and home remodeling fields, that would be done without a performance bond. I am quite sure of that. Now, we know that in public work and in the larger jobs and so forth, sure they are bonded. But not in the general field where most of the injuries occur.

BRADLEY: Are there very many cases where a person will contract with a contractor, let's say, to build a $10,000 home and they will hand the contractor a check for $10,000 when he signs the contract and says go ahead, build a house? Isn't it usually handled by progress payments, as the foundation goes in, the frame, the roof, the finish, and then 30 days for the filing of notice of completion, and so on? There's usually a five payment stage, isn't there?

HOSCHLER: I think that is a fairly general practise today. We find, in our agency, that much of this injury takes place in spite of that. And we do find that many contractors go beyond the contract price, many contractors do their work in such a manner that the owner is faced with an inferior type of construction after the completion, and is faced with further problems, and it costs him a great deal.

BRADLEY: This is a matter a little bit different from a contractor getting his hands on the money and heading for Las Vegas. Just right at the moment, I want something in the record to indicate that the particular examples that we were just given a few minutes ago are not the ordinary,

run of the mill, situations.

HOSCHLER: The very fact that monies are deposited in an escrow or with a dispersement or builders' control fund does not mean that this doesn't happen, and it does happen.

BRADLEY: It's not so likely to happen.

HOSCHLER: It's not so likely.

BRADLEY: There are very few cases, I would imagine, where anybody would give a contractor the full payment of a job and say now go ahead and build. In fact, I handle a little of this for clients, and I just can't conceive of anybody, unless they just happened to be so closely related to the contractor that they are doing it out of a most unusual case of trust or friendship or something of that kind.

HOSCHLER: I will agree, as I said, that it doesn't seem as though it should happen, but it happens. It happens even under Builders' Controls as set up to date, and it is happening, and I don't have to go very far in my memory to cite instances of where it has happened, this very thing. The money is borrowed on loans and deposited and the people end up on the short end.

BRADLEY: In AB 3125, the first sentence, which is lines 3, 4, 5, and part of 6, it says defective workmanship is a cause for disciplinary action. That is practically the existing law today, isn't it?

HOSCHLER: Defective workmanship is something that is susceptible of many meanings and arguments and interpretations, but it is implied. And we do it -- the only way we get at it is under 7109, deviations from plans and specifications in a material respect.

BRADLEY: Don't you have a clause which says a contractor is supposed to do the work in a good, workmanlike manner?

HOSCHLER: We do not.

BRADLEY: What is Section 7113?

HOSCHLER: Section 7113, and we do use that right along with 7109

concerns the contract. We use it widely.

BRADLEY: What is 7110, then?

HOSCHLER: 7110 has to do with violation of building codes. 7113, a failure in a material respect on the part of a licensee to complete a project for the price stated, primarily. But it says or any deviation, and that's where we can get into, get at them, on workmanship and so forth.

BRADLEY: Generally speaking, then, the only recourse a person has as to good workmanlike construction is in the contract, then.

HOSCHLER: In a contract, and also in areas where we do have building inspection and codes that are enforced. Now, we know that construction has increased at a phenominal pace in California over the years that even the building departments in some localities could not be aware of everything that was happening on the jobs.

McMILLAN: Any further questions? Do you have anything further, Mr. Hoschler?

HOSCHLER: I don't think so, Mr. Chairman. I could talk at great length on some of these matters that are of concern I think to the interests of the people of the State of California, in regard to better licensing laws.

McMILLAN: In summary, then, you don't recommend this bill, is that it?

HOSCHLER: I do not.

McMILLAN: Thank you very much. Now, J. Frank Park. Will you state your name and who you represent?

PARK: My name is J. Frank Park. I represent the Construction Industry Legislative Council, and the Construction Industry Committee of the Los Angeles Chamber of Commerce. The position of both of these councils and the Chamber of Commerce is to oppose Bill 3125. The reasons are that, as Mr. Hoeschler has stated, we believe they are quite adequately covered in the State Contractors' License Board, if it were beefed up a

little bit. Specifically, I would like to read the statement of the Chamber of Commerce, since it is in accord with the other. "Incompetent contractors should not only be subject to liability to the property owner for money damages but also to the suspension or revocations of their contractor's licenses." This certainly is a proper thing for legislation. In the matter of being against the bill, "civil liability affords sufficient protection against incompetent contractors. 'Materially defective' is an indefinite standard. Contractors should not be forced to second-guess the architect's design by determining whether the plans and specifications are 'materially defective.'" I would like to speak, cite an instance. I am an air conditioning contractor. I hold several licenses covering allied fields. Within my very recent past I was delivered a set of plans and specifications prepared by licensed architects and engineers, and they were grossly defective. Being on good terms with the engineer, I went to him, and I said, look, this is wrong. This will not be a good job. I was told, you go ahead and do it that way. Being on equally good terms with the owner, I went to the owner, and I said, in this instance, this is going to be a bum job. And we in the air conditioning business have too many of those now. So I made my position clear with both the owner and the contractor. The owner went to the contractor, the architect, who upheld the design of the engineer. I was instructed to put this job in. It was woefully defective and it still is today, and under the terms of this bill, as I interpret it, I would still be liable for all sorts of damages. I think this puts a contractor in a very difficult position. The contracting fraternity, as Mr. Hoschler stated, is ridden with a lot of fly-by-nights, especially in the air conditioning industry. If I may digress a little aside here, to the point of bonding, we in the industry believe that some qualification should be written into the bill to make it mandatory that a person going into business be qualified. In the case of the California Public Works

Department, I submit a financial statement every year. My financial statement is reviewed and they hand me down a letter telling me that I can bid and contract for buildings or structures in the amount, say, of $1,000,000.

McMILLAN: That is only for public works.

PARK: Only for public works. It would be the opinion, I believe, of the industry, that if it is not too difficult, that could be extended to the whole contracting fraternity. I have nothing else to offer. If there are some questions, I would be very pleased to answer from my experiences.

LEVERING: In the illustration that you just set forth, about the bum job, that you approached both the engineer and the architect and the owner. It seemed to me that if I were in your place and I contacted the owner and I was a reputable contractor as I know you are, why didn't you tell the owner that this is going to be a bum job and I am not going to sacrifice my reputation and have you dissatisfied. I won't do it.

PARK: Well, I think we all have a little mercenary -- or larceny in our hearts. In this case, I am looking for a buck and a job. I did a lot of work for this owner, and he said, no, I think I've got more faith in the engineer and the architect than I have in you. He soon found out when the job went on steam that it was a very poor job. It cemented my relationship with the man, frankly.

LEVERING: You made it perfectly clear to the owner that you thought this was a bum job and if there was any kickback, take it to the fellow. Well, that's fair enough.

PARK: That's correct. I made my position perfectly clear.

McMILLAN: But under this bill, he'd still be liable.

LEVERING: Well -- this bill -- I don't go for the bill.

PARK: Yes. This is the position we find ourselves in all too often.

McMILLAN: Any further questions?

BRADLEY: Mr. Chairman, you might suggest to Mr. Park that the next time that happens, you get it in writing from the owner that you are not responsible for the net effect of the installation, under the circumstances. If you don't get it in writing, of course you rely an awful lot on the friendship of the owner.

PARK: Yes, you're right. Thank you very much.

McMILLAN: Thank you for appearing. Henry B. Ely.

ELY: My name is Henry B. Ely, and I am Executive Secretary and General Counsel for the California Council of Refrigeration and Air Condition Contractors Associations. Our association vigorously opposes this bill. Some elements have been already considered. Another element that is particularly true in the refrigeration and air conditioning industry, is we have some 80 or 90 national manufacturers that are constantly putting in and developing new equipment. If an owner specifies a particular make of manufacturer and this is a new design placed on the market by a manufacturer, and the owner specifies it, even the contractor may not know its defects at the time, and yet under this law he would be liable for any defects in the design of the equipment. That is just one more reason that I feel that it is clear before your committee that this bill should not go out. I have submitted a statement to all of the members of the committee. I hope they'll read it. It is not very long. I would like to say, along with Mr. Park, that the construction industry is much interested in getting some kind of responsibility for contractors. The conditions which Senator Bradley indicated in the industry are true, in many instances, that the owner will not give up all the money to the contractor, but the bank will pay to the owner the full amount on a loan, in many instances. We did a small remodeling job, $5,000 in our home. The bank just turned the check over to us. We put it through the Builders' Control. It costs a little money to put it through the

Builders' Control. It costs a little money to have a bond. And unfortunately most of the public, the ill-advised, the ones that haven't had experience in contracting, those that are not used to dealing and building their own homes and all the rest of it, or their buildings, would rather save this amount of money which it will cost for a bond, or the cost for the Builders' Control, and take a chance, that their swimming pool will be put in without liens or whatever it is.

McMILLAN: What is this Builders' Control?

ELY: The Builders' Control is a private organization, that for a small fee will take the money in trust from the owner as an escrow, almost, in real estate, except that this is for the building, and then pay out to the general contractor and to the suppliers only on paid bills, and they examine the progress of the job from time to time to ascertain whether the work has been put in in accordance with the plans and specifications. Just like having your own supervisor to that extent on the job. They are not in careful supervision, but they see that the bulk of the work is in, the bills are paid for, and they pay accordingly.

McMILLAN: I am glad to know about that, because I am going to have some work done on my kitchen, a remodeling job, and I'm glad to hear it.

ELY: As I say, it costs a little money.

McMILLAN: What do they charge?

ELY: I think it is one-half of one percent, or something of that sort. It's not too great, but most of the public doesn't want that protection, and our industry has been trying for a long time to get even a minimum compulsory bond through the legislature and I think the legislature now is changing its opinion. Before, we always met this opposition -- well, one of my constituents is a carpenter and he wants to build some buildings, and are you going to require him to have a bond? Well, that was too tough an argument to answer.

McMILLAN: Is this Builders' Control bonded?

ELY: They're bonded, I believe, yes. And they have been in business for a long while. They don't use much publicity. But I think some kind of bonding will be necessary. I hesitate to say just financial responsibility, because you always have the question, who determines whether I am financially responsible to build a dog hut or to build a home or to build an office building. Who determines that? Now, the state determines that to their own satisfaction, as an owner. But we would like to see some kind of financial responsibility or some bonding and we hope maybe within the authority of your committee and the various resolutions that have been passed, that you might be able to at least mention it in your report, so that we can get somewhere. As I say, we haven't gotten very far, so far, with the legislature, on any general bonding of contractors.

McMILLAN: You have heard of this financial statement that is required for public works. Do you think that would be good?

ELY: Well, Mr. McMillan, the way I feel about it is this. As you, an attorney, also would feel about it. You have to have some person to determine, in the government, to determine from me, when I am building a garage or when somebody else is building something else, throughout the whole state, basically, you have to have somebody to determine what financial quick assets the contractor should have. And that is quite a job for any state agency to perform. Now, when the state is acting as owner, then they certainly are fully qualified. If you are going to put up a school or whatever it is -- but schools are not under this state qualification, I don't think. They should be. There should be at least pre-qualification for all government work. There should be that. I don't think they have that, yet. But they are owners, and they can say, well I want a contractor that's got $50,000 quick assets to build this particular building. But how to do it generally, for every contractor on every job throughout the state, is going to be a problem for the

members of the legislature.

WILLIAMSON: Can a contractor purchase a bond, or bond himself through a bonding company, for a fee?

ELY: Yes, he can. We are in favor of some kind of compulsory bond.

WILLIAMSON: Don't they, then, have some kind of standards that would apply here?

ELY: That is right. The bonding companies in the past -- I think they are changing -- have been against bonding everybody. Because they don't want to take that responsibility.

WILLIAMSON: It's business for them, though.

ELY: It's business for them. I think they are changing. And the bonding companies can do that. Either a compulsory bond, and this has been a view among the members of the bar association -- problems of the lien law are attributable to the fact that no bond is filed to cover the claims on a job.

WILLIAMSON: Couldn't the legislature then go into this on the basis of requiring either a cash bond, even though they might set too high a cash bond?

ELY: That's right. Some kind of bond could be required.

WILLIAMSON: That, or a policy or a bond.

ELY: That is right. A cash bond or a performance bond.

WILLIAMSON: Performance bond. Nothing like this is required at all now.

ELY: No. It is only required in -- the Construction Industry Legislative Council -- we have succeeded in prevailing upon the legislature that when you have had your license suspended, then when you go back into business, you have to have a bond. We've gone that far, and the legislature in 1961 accepted that principle. But they have not accepted the principle that every contractor must be bonded, either cash or a surety company.

WILLIAMSON: Would such a provision, in your opinion, exclude many people from entering into the business that properly belong there?

ELY: I don't feel so. I feel that the basic problem is this. It's not the job that the carpenter, we'll say superintendent forms a small construction company and does one home -- he wouldn't be excluded -- the bond wouldn't be high enough. It's when, the problem has been in the construction industry, that when the small contractor, or a contractor in a particular field, goes into a very large field, without proper preparation, without the proper skill and background, then he bites off more than he can chew. Then he is in for trouble. I don't think it would keep out anybody who should be in the business. It will keep out somebody who has no money, no assets, nothing.

McMILLAN: Any further questions? Thank you very much. Mr. Kramm, do you want to make a statement on this? Here's a man who is an authority on contracts and marriage licensing and personology. What other qualifications do you have?

KRAMM: Thank you very much, Mr. Chairman. My name is Ernest Kramm. I am the Public Relations representative of the 9th District Council of the National Electrical Contractors' Association. I believe you all have before you a copy of the prepared statement which we made. May I ask that that part of it which pertains to AB 3125 be included in the record as part of our testimony, and then I can skip through this a little faster, if that is satisfactory, Mr. Chairman. Thank you. I would like to read excerpts from it. The proposal to adopt 3125 which would hold contractors responsible for materially defective work, even though installed as per plans and specifications, would in effect require that the contractor assume a dual responsibility of both engineer and contractor. The contractor, at the risk of having his license revoked would be held responsible for any failure on his part to discover in the plans and specifications any engineering errors or deviations from

construction codes which would result in materially defective work. Such a law would work to the disadvantage of any conscientious and law-abiding contractor, who would consider himself obliged to employ or retain engineering personnel, in addition to any that he might already have, to check all plans and specifications prior to bidding, so that he could notify the architect or engineer in sufficient time for an addenda to be issued to all bidding contractors, or he would be forced to qualify his bid; whereas the careless or unscrupulous contractor might do neither, taking a chance that he might work his way out of the problem later if he got caught. We believe that the primary responsiblity as to the correctness of plans and specifications should properly rest with the architect and his engineer, or such other party who prepared them. It could be the electrical contractor, however, who prepared these plans for a particular job. It is the contractor's responsibility to abide by his written contract, based upon those plans and specifications pertinent to that contract. We cite the same sections of the law that Mr. Hoschler referred to. In talking to Mr. Hoschler about Section 7109 which has to do with wilful departure from or disregard of plans or specifications in any material respect, he indicated to me that it might be helpful if they inserted, this is merely a suggestion, after the words plans and specifications at the end of that sentence, the words "and in good and workmanlike manner in accordance with accepted trade standards." I do believe that some language along that line might strengthen Section 7109. Presently I do not believe that it would be right to remove the words "Wilful departure" because we could make a contractor very vulnerable for other actions. I might also call to your attention the effect of the two sections of the law that we now have. We have 7109 which has to do with wilful departure or disregard of plans and specifications in any material respect, and Section 7110, which has to do with wilful or deliberate disregard and violation of building laws of the State, or of

any political subdivision thereof. The electrical contractor, as is true of all subcontractors in their relationship to the prime contractor, is usually confronted with a contract which the general contractor, prime contractor, asks him to sign, in which he agrees he will put the job in in accordance with the plans and specifications, he will put it in in a workmanlike manner, and that he will put it in in conformance with all codes and standards. This creates an impossible situation oftentimes, and if he is a prudent contractor, has to work this out with the architect and engineer, and they must determine whether it is of sufficient consequence that they have to ask for an addendum to be issued to clarify certain points at issue. Now, I think from what I have said, you can see that the proposed bill is not a practical one.

I would like to call attention, as Mr. Ely did, to the need for other legislation that might perhaps help to solve the problem. One is to require bonding. The CILC has supported legislation requiring bonding in the past. It has not sponsored a bill to require a mandatory bond in all cases of contractors.

McMILLAN: Does a contractor get a bond?

KRAMM: They are getting bonds all the time. Whenever asked to, a contractor produces a bond. Now we have found -- I can't give this information -- maybe somebody else here could give this, what it costs --

VOICE FROM AUDIENCE: Around one percent. Sometimes three quarters of one percent.

KRAMM: We found that the surety companies' association opposed in the past any bill requiring a mandatory bond of all contractors. We were successful in the last general session, and it was my pleasure to work with this particular bill in the framing of it, to require a mandatory bond in the event a license were suspended or revoked, a mandatory bond or cash deposit in the amount of $2,000 to $10,000, depending upon the magnitude of the contractor's operations. This,

of course, is one of these situations requiring a bond after the horse in out of the barn deal. But, as Mr. Hoschler here, I am sure will agree, it has done a great deal to keep out of the field of contracting many contractors who would otherwise have been able to continue in the field. Perhaps the requirement for bonding, under Section 7071.10, the Contractors License Law, could be expanded to require such a bond of every contractor. We have also considered writing into the Contractors License Law, a requirement that the Contractors License Board investigate as to financial responsibility or make requirements as to financial responsibility at the point of issuance of a license and for maintaining a license. The proper place to put that in the Contractors License Law would be in Section 7068. The law merely makes this simple requirement in its basic statement of what they require of a contractor upon issuance of a license. The Board shall require an applicant to show such degree of experience and such general knowledge of the building safety health and lien laws of the state and the rudimentary administrative principles of the contracting business as the Board deems necessary for the safety and protection of the public. We have sought in the past to get the words, financial responsibility written in there. There is some fear that this might put the Board in the business of classifying contractors as to size or scope of business they might do, depending upon their financial condition. However, as it now stands, there is no requirement whatsoever. Although the application forms for a contractor's license does have a place on it to put a financial statement, a person applying for a license can ignore it or cross it out and they will still grant him a license, even though he has made no statement as to his financial condition, not even a statement as to whether he has a dollar in assets, net assets. Personally, I would like to see the Committee introduce legislation along the lines requiring financial responsibility and perhaps bonding. We know certain elements of the

industry oppose a requirement for a bond. We also are aware of a weakness or a loophole in that part of the Contractors License Law that has to do with bankruptcy and assignments for the benefit of creditors. As the industry gained acceptance of legislation four or six years ago, we made it a basis for disciplinary action, if a contractor went bankrupt, or made an assignment for benefit of creditors, that this assignment was merely an assignment made by reference to a code section in the law, to a sheriff, that type of assignment, and the kind of assignment for benefit of creditors that trouble us and that we need to correct, needs to be re-written, are those where you make an assignment to the suppliers from whom you buy material and all your various creditors. They run your business for you and you probably end up with a settlement of two bits on a dollar and you don't go through bankruptcy at all. People are continuing to operate in the contracting business even though they have performed such acts, and there is no way to get at them.

LEVERING: Getting back to this financial responsibility -- wouldn't that be very difficult for any board to measure a requirement of financial responsibility? There might be a carpenter who is a pretty good man, who has a good reputation and good credit, and he might want to start building some small buildings, and so forth. Now, on a contract with progress payments he could almost operate on his customer's money, as it is paid to him, step by step. On the other hand, there would be an individual that would want to go into half a million dollars on a contract. Now, certainly, you would have to have some measure of being able to evaluate what financial responsibility is. How could a board do that?

KRAMM: This troubles us, too. And we thought, perhaps, as an initial step we might merely require that any applicant for a license provide a financial statement signed by a CPA or a public accountant,

and at the renewal of his license, provide such a statement each time, at least he will have it, and he must show that he is solvent. That might give us at least some tool to work with, and some way of uncovering some of the problem cases before they develop. Now, the alternative to requiring that the board determine financial responsibility, is bonding, and then we don't have to make reference to that, except that the contractor provide a bond. And this would have to be based upon his general operation.

LEVERING: The bonding people have not been receptive to that idea, and the reason is, they don't want to take a chance on some fly by night.

KRAMM: They are not receptive. They don't want to be in the business, as they told me, of investigating contractors. They are just lending institutions in their own right, and they assume a certain risk, but they don't want to make detailed investigations.

LEVERING: But a bonding company, when they take a good sized bond, are going to look up at least the financial status of the man they are writing the bond for. They don't do that just blind, do they?

KRAMM: Well, for our part, Mr. Levering, we are in favor of bonding.

LEVERING: Yes, but then you are by law, forcing the home builder into protecting himself against somebody else, and he may not want to do that. See what I am getting at? Say he builds himself a $20,000 home. Maybe he wants to watch the thing himself and see that everything goes along as it is supposed to. Now you are forcing him to pay $200 extra, in order to protect himself against defaultation on the part of the contractor.

KRAMM: I think the public is about ready for that kind of protection.

LEVERING: Of course, you are doing away with the individual right of the private citizen when you advocate that.

KRAMM: A bond or a cash deposit.

LEVERING: I think you are doing away with the right of the private citizen to take his own risks.

KRAMM: Well, we look to you to come up with some suggestions.

LEVERING: I think everybody has a right to make his own mistakes, if they want to, and it shouldn't be forced by a government to do something that is against their better judgment and will.

McMILLAN: Any further questions?

CUSANOVICH: Mr. Chairman, is anybody for this bill?

McMILLAN: I guess not. All right, thank you, Mr. Kramm. Is Mr. Ernie Bernardi, City Councilman in the room? He is not here yet, so we will take up Number Two on the agenda. This is House Resolution 440 by Assemblyman Hawkins. Mr. Williams, will you come forward? Earl Williams. He was here a minute ago. Is Mr. Schott from the Legislative Budget here? Is Ronald Clark here? Is there any representative here from the airlines? Mr. Thigpen or Mr. Murphy or any representative from the airlines? Mr. Williams was here this morning. I don't know what happened to him. Well, then, we will take up Assembly Bill 2011. Mr. Bernardi, we are ready to take up Assembly Bill 2011, which you are interested in, I think. Will you take a chair, state your name and whom you represent.

BERNARDI: My name is Ernani Bernardi. I am the City Councilman representing the 7th District, City of Los Angeles. I wanted to make a statement on this matter that you were discussing. I have a copy of the bill, here. First I might mention that December 12th, 1961, I introduced a resolution into the City Council that was adopted. It had to do with trying to find some solution that would enable prospective home buyers to have a little more complete information on the actual conditions that exist when they are purchasing a residence or purchasing any type of real property. In new construction, particularly in new

subdivisions, they do have the protection, because the subdivider must, before he can sell his completed structure, must file an application and receive a Real Estate Commissioner's report, and every prospective buyer must physically be handed a copy of this report that outlines in detail just what the conditions are and he must physically sign this before any purchase actually takes full effect. We have situations in the City of Los Angeles where there are many areas -- this is well and good where it applies to the new subdivision. There is ample protection there, but once it goes beyond that stage is where most of our problems, as a matter of fact, all of our problems, develop. There are many of these areas where they now have legal streets that have been designated so probably many years ago prior to the adoption of any adequate master zoning plan, and these are legal streets with legal frontage, but they may lack considerable improvements. They may not have any paving and not have curbs and gutters and street lights, sidewalks, or sewers. And as a result, there is a considerable amount of this going on in the City of Los Angeles, where the property owners will then get together and get a petition form from the city, and when they have more than 50% of the property owners sign this petition, it is called the 1911 Assessment District Act, they then petition the city to put in certain improvements. Either they put in all the improvements, or they can put in whatever they are lacking or whatever they desire. But unfortunately this procedure sometimes runs into several years. And in the meantime, the original applicant may have sold their properties, may have moved out, and sometimes this may happen two and three different times on a particular piece of property, before the plans are completed, and before we are ready to hold public hearings to notify these people that the project is now ready to be let out to bid and that they would be subject to an assessment.

McMILLAN: Do they pay for all of this improvement?

BERNARDI: These property owners pay for all of the improvements, including all of the engineering costs, all of the expenses that the city goes through, and we find that in many instances where a prospective buyer may buy in the interim between the time that the petition was signed and the time that we finally hold these public hearings, and we have had cases where there was as short a time as a week or two has elapsed, and they are not aware, and it can sometimes run into a sizeable item. It may run anywhere from $500 up to as high as three and four thousand dollars. And this creates, at times, quite a financial burden on this purchaser, a burden that he had not planned for. And if some procedure could be followed, as we have, not necessarily applying for a Real Estate Commissioner's report, but where the city would record any intention of an assessment job. In the survey that we have run in the City of Los Angeles, this would be a rather nominal sum, it would cost about $400 a year for the City to record this fact that there conceivably could be an assessment district set up. This would cost the city about $400, and then in all title reports, it would then show this condition, because even the minimum fee that is paid for title reports shows all the conditions of record. And I had to consider the possibility that then, if in escrow, the prospective purchaser were required to physically sign some type of receipt that he had read all the conditions, at least we would have a minimum of protection for these people, and they would be made aware of any of these conditions that might create a rather substantial financial burden. This also can apply, and does happen, in some of the older homes and older structures that we have where the Department of Building Safety has gone in and has issued a rather substantial list of items that need correction and sometimes the purchaser is not aware of this. If this matter would then be reported, and would show up on the title policy, and again, if the purchaser, as the seller is required in the new subdivisions, your new structures,

would then be required to show the purchaser the conditions and he would receipt for it, we think at least the buyer would then purchase this property with his eyes open and it would eliminate most of the complaints that we receive from the buyers.

McMILLAN: Mr. Bernardi, do you have any instances of house movers leaving unfinished or poorly finished houses in your district?

BERNARDI: Oh, this is a very serious matter in the City of Los Angeles. What happens is -- of course they get a permit to move these structures either from where the freeways are going in or where in some form or other government construction will be going on. The owner gets the permit, or the purchaser. It may be they are reliable housemovers, and then there are the other kind. They will get the permit to install these houses on lots, and although the city has rigid requirements as to the neighborhoods they are permitted to go into, up until just recently we had no control over what happened once they were given a permit, and were given permission to move these structures into these residential areas. So we had records of cases where the houses sat on the foundations as long as four, five, and six years, with no work being done. Of course generally in some of the cases they get the property owner to subordinate probably all of the property. There is no cash transaction, and they may have gotten a substantial loan, the person that is moving this house on, whether it is a builder or a house mover, and somehow or other have gotten substantial funds out of the loan, and they have no investment at all in the property, and they can move out, and as a result, the neighborhood is left sometimes in a very unfortunate condition, and this reflects, at times, they will move as many as three or four or five or maybe six houses into an area. And we have, in trying to help this situation, as far as we can go, anyway -- although they require a bond to be put up to guarantee --

McMILLAN: The house mover?

BERNARDI: The house mover, that the structure will be completed, yet the time involved in forcing the bond requirements so that the work can be done, will run two or three or four years. The delay is where all the problems set in. So what we are attempting to do now, and we have passed an ordinance permitting this, is the city setting up a revolving fund where after a certain length of time we will go in -- the city itself will go in and complete the structure -- we have set up this revolving fund -- while we are suing and recovering the funds from the bonding company.

McMILLAN: Well, let me take an example, of a freeway going through and a house is condemned. Now, before that house can be moved off the property, the owner must get a permit from the city.

BERNARDI: This is correct.

McMILLAN: He has to state where it is being moved, and the new location must be approved. Is that right?

BERNARDI: This is correct.

McMILLAN: There is nothing in the arrangement that it must be erected or installed in a certain length of time, is there?

BERNARDI: Yes, there is a requirement that it must be completed within a certain length of time, but if they are not completed within that length of time, then the recourse that the city has is to sue on their bond, and this is where the problem arises, because suing on the bonding company may take as long as two or three years to finally get action.

McMILLAN: What is your suggestion, then, for remedy?

BERNARDI: The remedy the city is now taking, is of course -- there are two actions they are taking. Bonding companies that they have had problems with, that insisted on bonding people that persist in this type of operation, the city refuses to accept bonds from these insurance companies, and the other action that we have taken, is that we have set

up a revolving fund where the city, after 120 days -- we give them a 60 day notice -- if there is no work, progress being made, then the city will go in and act as a contractor and get the project completed, using this revolving fund in the meantime while they are suing the bonding company.

McMILLAN: Is that working out? Satisfactorily?

BERNARDI: We have just started. This was just enacted I think about a month ago, so as of yet we have had no experience. The Department of Building and Safety has been rather concerned with this, and believes that this will help considerably in eliminating the situation.

McMILLAN: If it doesn't, have you any suggestions for any state legislation?

BERNARDI: I think maybe we ought to see what happens in this situation -- see if this will solve or help in solving the problem. I am sure the Department of Building and Safety is very interested in this. If this does not answer the problem they would be more than happy to recommend to us something to suggest to you that will resolve this problem.

LEVERING: I wonder if you wouldn't elaborate. You say sizable amounts of money have been procured from loan companies. Do you mean that the money has been loaned on a lot in the form of a trust deed?

BERNARDI: This is correct.

LEVERING: And then has anything been loaned on the house itself?

BERNARDI: No, there would probably be no loan on the lot, but your loan is predicated on a lot and a certain set of plans that have been submitted to the lender -- the phrase is the total completed project, that would be the house and the lot.

LEVERING: Who gets the money, then? The mover?

BERNARDI: Whoever has the contract to -- whether it is the mover or the contractor who is doing the actual --

LEVERING: And then he defaults on it, because he has the money.

BERNARDI: Generally, I don't believe that they will get all the money because the lenders have been tightening up. The problem arises when they get into private financing. If you get into a Building and Loan or to a bank, that are aware of these situations, then they put rather stringent requirements on whomever is completing this project.

LEVERING: Is there any possibility, if the city goes into this, as you just mentioned, that the city is going to incur losses, because they are not going to be able to get out of the property what is against it?

BERNARDI: The only person that incurs the big loss is the original property owners that may have subordinated their property and not gotten a dime, not gotten any cash at all for the property. Because by virtue of the first trust deed, all they have to do is foreclose, and either the second mortgage holder --

LEVERING: He's squeezed out then, or else he has to buy in.

BERNARDI: He either has to take it over or he is squeezed out, so generally there is an economic situation there where it is really worth while for someone, based on the first trust deed, to generally take over the project and complete it.

LEVERING: Then there is not much possibility of the city incurring any loss.

BERNARDI: This is what we are hoping.

CUSANOVICH: Ernie, according to our records here, San Francisco and Oakland have their own ordinances on this. Have you looked those over?

BERNARDI: I have copies of them here. I haven't had time to study these completely.

CUSANOVICH: Do you believe it would be better for the cities themselves to get ordinances, or to have the state do this, because

San Francisco particularly feels there were two or three objectional things in AB 2011, that interfere with their ordinances.

BERNARDI: You mean this bill that is being proposed, 2011 -- now just offhand, just looking at this 2011, it would appear that you are requiring the city to go to considerable work, and maybe keep a staff that might not be necessary, because a lot of this information is available. Our problem, Lou, has been just in not knowing when these assessment jobs may have been initiated, or there have been certain conditions imposed by the department of Building and Safety. I believe it would be less cumbersome and less costly if it could be handled in some similar way like your new subdivisions are handled.

CUSANOVICH: Has Los Angeles City attempted to draft an ordinance to take care of this in any way?

BERNARDI: We are in the process of trying to push to require that the city record all of the assessment acts and these other factors that would materially effect the cost of a piece of property that might not show up in the sale. This is as far as the city is attempting to go. By recording this, this will show up on a title policy. As to whether that is disclosed to a prospective purchaser or not, then the city does not have any jurisdiction. This would then come under the jurisdiction of the state.

CUSANOVICH: Mr. Chairman, I would like to get it into the record that Mr. Bernardi is my Councilman. He has done a fine job. He is very thorough on this subject. He is a contractor.

McMILLAN: The election is over, isn't it?

CUSANOVICH: He is running again later, and he not only is a contractor, but he was the Man of the Year, the BCA last year, and I think he is very much aware of what is going on in this subject.

McMILLAN: A very able councilman.

BERNARDI: Thank you.

McMILLAN: Is there anything further that you would like to add?

BERNARDI: Not that I have, if you have no further questions.

McMILLAN: All right. Are you going to be available? Can you stay until noon? Probably some other witness will bring up some questions that you might be interested in.

BERNARDI: I would be happy to stay. Thank you very much for this opportunity.

McMILLAN: Thank you. Lieutenant Hull, from the Los Angeles Police Department. Lieutenant, will you state your name for the record?

HULL: I am Lieutenant William C. Hull of the Los Angeles Police Department, Fraud Division.

McMILLAN: Have you some comments you would like to make on this subject?

HULL: Well, the relocation situation here in the City of Los Angeles is causing us considerable amount of complaints, in the Fraud Division of our police department. People reported to us that they have subordinated title to their property, to their lot, to some house relocater. A house has been in turn moved in on the property. Financing has been obtained on the first trust deed, and then the house itself has not been completed, and has been allowed to stand any place from six months to a year, year and a half, and payments haven't been made on their trust deed subordinated to the second position behind the first, and as a result they lose title to the land, and they don't have the money to take up the delinquent payments on the first trust deed in many instances, and this is resulting in loss.

McMILLAN: What is this, a sort of a racket that has developed among the housemovers because of the good business on account of the freeways, and one thing and another?

HULL: Yes, that is precisely what has happened. The freeways moving through the city have taken many older structures, and the airport

expansions and other improvements.

McMILLAN: Explain to the committee just how these housemovers operate, will you?

HULL: The housemovers will move a house. They'll buy it from the path of a freeway and actually they take it out to a holding lot, or a storage lot, maybe in the outskirts of the city, maybe outside in the county. And then the housemovers will go around and locate a desirable piece of property, a piece of real estate, a vacant parcel of land.

McMILLAN: Do they buy the house outright from the owner?

HULL: Yes. For just a few hundred dollars. And it is generally -- the pictures I have here of a house that was moved for the Sports Arena on West Santa Barbara, the house was built, I think, 1921 or 22. It's a multiple unit situation. This house was taken out on South Figueroa to a holding lot, that was purchased by the housemover, and then this housemover in turn located some property on South Central Avenue, and entered into a subordination agreement with the owner of this land, and then a default was entered into and no payments were made and there was not enough money to fix up the house and then --

McMILLAN: Was the house moved on to this?

HULL: Yes, the house was moved on, and the city has required a completion bond which was posted and, this is a typical situation, when people lived in it for a little while and then moved out, and then the holder of the second trust deed was unable to bring up with the necessary money, and he lost his second, and in turn lost his title to his land, as a result of subordination.

McMILLAN: And the housemover ends up with the property, with the cash.

HULL: With the cash. He walks away with the cash, between the cost of purchasing the house, the amount of money he gave for the subordination of the first, and the necessary attendant expenses with it. It seems to

be a going vehicle of fraud that has been growing, and we are receiving many, many complaints. We have worked with the Department of Building Safety, and the new laws that we hope to get through the Council we feel will correct this situation to a large extent.

McMILLAN: Is there any conspiracy between the housemovers and the holders of the trust deeds, the first trust deeds?

HULL: We feel that that is an area, which I am not prepared to say at this time, I have the feeling that it certainly is a possibility in some of the cases that we have investigated, that a conspiracy did exist, because there was never any attempt to satisfy these trust deeds. There was an intent from the very beginning, to let them go into default and foreclosure and to walk away with the proceeds, and it was just used as a vehicle of fraud, as an inducement or window dressing, to drain away this money. We believe that more than one person has joined some of these schemes, therefore criminal conspiracy does in fact exist. It is because of this that we are pursuing this investigation.

McMILLAN: Are you familiar with the Jack Katz operation?

HULL: Yes, I've been investigating various phases of that for approximately nearly a year.

McMILLAN: Could you tell the committee what you found there?

HULL: This is an open investigation as far as I am concerned, and we haven't moved for a complaint, and I wouldn't like to reveal the scope and phase of it that it is now in, other than that it is a current, active investigation for the Fraud Division of the Police Department.

McMILLAN: Have you any idea of how many houses this Katz outfit has moved?

HULL: Well, tracing out the Grand Tour of files, with certain nominees that have been used, in just one case of one nominee, we found over 100 recordations. That gives us a little insight, and we have statements from other individuals that would indicate it is running

into a very high figure of number of houses or units moved.

McMILLAN: You have the case under investigation now.

HULL: Yes, we do, sir.

McMILLAN: Are you getting a lot of other complaints from house movers?

HULL: I don't quite understand that. From other house movers?

McMILLAN: I mean about housemovers. Is this a common thing? I mean, are you investigating a number of these cases?

HULL: Yes, we have a number of them under investigation. The complaints that have been made against Katz are the most flagrant as far as numbers go.

BRADLEY: If I understand you correctly, what you are saying is that there is evidence of deliberate default on the part of the holder of the first deed of trust. Is that right?

HULL: I might state it this way. We have been informed by informants and other people closely connected with this activity, that there is deliberate intent. In fact, in one conversation those instructions were given.

BRADLEY: Who is usually the holder of the first deed of trust, the house mover?

HULL: No, it's investors -- oftentimes private investors, occasionally investment houses. Private people are buying this first T.D. papers, generally on short in term financing, at a 10% discount.

McMILLAN: Is there anything further, or any further questions? All right, thank you very much, Mr. Hull. Mr. Harrington. Will you state your name?

HARRINGTON: Mr. Chairman, my name is Gerald E. Harrington. I am Assistant Real Estate Commissioner of the State of California, in charge of the Southern Regulatory Area. I came this morning to speak just a little as to the financing of this operation just described by Mr. Hull,

and how it applies to the Real Estate Law we now have in effect. The real property security dealer's law which was enacted in 1961, as a result of the 10 percenter scandals, may cover some of this financing, but I think mostly, when it is in a subdivision, as was mentioned earlier by Councilman Bernardi, when first trust deeds are created, in a subdivision they are considered promotional notes, and as such, before they may be sold to the public, the seller must obtain a permit from the Real Estate Commissioner. If they are not in a subdivision, then, unless they are guaranteed or they enter sometimes into an investment contract, they would not come under the existing law. The other area where our law may cover some of this operation is -- was also part of the bill which was part of the 10 percenter legislation, and that, added to the definition of a real estate broker, one who sells notes secured by trust deeds in the amount of three or more in any one year. And we also have this matter under investigation at the present time.

McMILLAN: Thank you. Any questions? Thank you, Mr. Harrington. Is Mr. Linas Fike here? State your name and whom you represent.

FIKE: My name is Linas R. Fike. I am with the law firm of John N. Frolich and myself, Linas R. Fike. I have made some investigation into this matter because of clients we represent. If you care, I would make a statement on it at this time, on what I have found, if you care to hear it. This program of housemoving and financing, we have found, our firm has found, has many of the elements of the old confidence game. The housemover will find a vacant lot, or several vacant lots, and then through a real estate broker or some other means of access, he will contact the owner of the vacant lot and perhaps offer him a little more than the owner thinks the lot is worth. If the lot is worth $3,000, then they offer him $4,000. Of course everybody wants to make money, so the man who has the vacant lot is interested at once in the sale of this land. So they will meet at an escrow company through this real estate

broker, usually the same escrow company, and the owner of the land is told that the house will be moved on and the land will be improved with the house being moved on and completed, and all he has to do is to subordinate his land and his second trust deed or his right in his land to a first trust deed, and then as soon as the land is improved and the deal is consummated and a purchaser is found for the land, why his second trust deed will be safe. Now what actually happens is this. I might say that sometimes that happens. Sometimes it is paid out. But many, many times, the house is moved on, it is not finished, or it is finished at a time beyond which the first trust deed holder can wait for his payments and he forecloses and there are two situations. Where the house is either not finished when it is moved on, or if it is finished, the complete unit is not of the value promised by the housemover. The housemover will promise, for instance, the land owner, that the value of the completed property will be $15,000. When it is completed it will be maybe $12,000, so the second trust deed holder has no value in the land, because the first trust deed holder will have all of the equity, and the second trust deed holder is out. Most of the time, the second trust deed holder, the one who has subordinated his agreement, will be paid a small payment, $1,000 or something like that, so that he feels he gets something out of his land, but he will always lose; in the majority of cases that we have found, he will lose anywhere from two-thirds to 75% or more of the value of his land, because his second trust deed is wiped out. That's the general method of operation, as we have found it. The second case is where the house is finished as promised by the housemover, but the value isn't there, and the housemover apparently knew all the time the value wouldn't be there. So again, the second trust deed holder is wiped out. And then there are times when the house isn't even moved on. But that doesn't happen too often. Generally there is an attempt to complete or a faulty completion or a completion to the extent that the

housemover knew the value wouldn't be there, but the owner of the land didn't know it. And so the housemover gets his money, the first trust deed holder forecloses and gets his money, and the man who has subordinated his land to the agreement gets nothing. That's the trouble.

McMILLAN: Is that just a good free enterprise business procedure, or do you think that there is a laxity in the law, that the owner should be protected through the standards.

FIKE: In my opinion, that would be a good free enterprise procedure if the owner of the land were fully informed of the chance he is taking, but he isn't fully informed.

McMILLAN: Do you think the law should require full disclosure?

FIKE: I think so, in cases like this.

McMILLAN: You would recommend that, a change in the law.

FIKE: Yes, I would.

McMILLAN: Do you think that that would protect the property owner?

FIKE: Well, nothing will ever fully protect, but it would help.

McMILLAN: Well, I agree with you. Any questions from the committee?

BRADLEY: Mr. Chairman, who has the first, the housemover or the finance company that is financing the house mover or -

FIKE: The housemover will subordinate the land of the land owner to the completed property, even though it isn't yet completed, and the lien will generally read that the landowner owns a second lien to a first trust deed which will hereafter be placed upon this property. Then the owner of the first trust deed, either, after the house is moved on, or sometime during the operation, will invest his money at a discount and get a first trust deed back, and the money is given to the housemover, and then he always has enough in the property as completed to protect his first lien when he has to foreclose. And he generally--

BRADLEY: Well, who has the title? That's the person who is supposed to be making the payments on the first and the second.

FIKE: The title to the land is held either in the housemover or a nominee.

BRADLEY: That's the situation, then, where the housemover, let's say deliberately doesn't make the payments to the first, and the first goes into default. Is that the idea?

FIKE: That's right. The land and the house is held in the name of the housemover or the nominee. For instance, I have here a list of some one, two, three, probably 20 nominees used by Mr. Katz, until such time as the house is sold. Then, of course, the owner, the new purchaser of the house, is the one that makes the payments to the first trust deed holder. The house many times is not sold on time, and then the first trust deed holder forecloses on the land, because no payments are made. There is nobody to make the payments, except the nominee, and the nominee doesn't make it.

BRADLEY: Well, then, the lot, or land owner, is not fully advised as to the amount of the proposed first deed of trust, so he has no way of knowing at the time he subordinates, just what his second is going to be subject to.

FIKE: Yes, he is generally fully advised as to the amount of the first deed of trust, but he is also advised that the property will be worth enough over and above the first deed of trust to protect his equity as second trust deed holder, which it rarely is. The equity of the second trust deed holder is not there, generally speaking.

O'CONNELL: I am wondering -- this bill that we are talking about here -- AB 2011 -- doesn't appear to me to reach the problem that we are talking about here in connection with this matter.

McMILLAN: We are going a little afield on this subject.

O'CONNELL: This is a subject, an abuse, that really isn't before us today, isn't it?

McMILLAN: Well, the housemoving isn't, no, and the trust deed is

not, but we just happened to get into it. Do you object to it?

O'CONNELL: No. It is interesting, but I was just trying to see the connection between AB 2011 and --

McMILLAN: We are going a little afield here, that is true. Mr. Fike do you care to make any further statement? Any more questions? Thank you very much. Mr. Paul McCarron. Mr. McCarron, did you care to talk on this 2011?

McCARRON: Yes, Mr. McMillan. My name is Paul N. McCarron. I represent the California Real Estate Association. In connection with Assembly Bill 2011, I think I can make this pretty short. Our position is in line with some of the points arrived at by Councilman Bernardi, and brought out in questions between members of the committee and the councilman. In our opinion, the bill is not geared to do the job which seems to be inherent in the problem, and the question of whether or not it can be better solved at a local level by ordinance could well be researched. I believe that the bill as drawn, the Kilpatrick bill, is drawn so that people who had perhaps no bona fide purposes in mind, could harrass the city desks and the property owners, perhaps even with repeated requests, for either frivolous or prying information which would not meet the evil or the problem which I believe the proponents of the bill originally intended. I would just say this also, that the bill was apparently intended as in some manner, a supplement to the new state housing act, which appears to be going along in fair shape, and to the McMillan bill which greatly strengthened the building standards commission's powers. But we do not feel that the powers given in this bill or the direction to the building standards commission to perhaps impose directions on the local authorities, tending towards the inspection or reinspection, invasions of privacy, and other concomitants of this bill, we do not feel make good law either at the state level or the local level.

McMILLAN: Any questions from the committee? Thank you very much.

O'CONNELL: Are you familiar with the provisions of the San Francisco ordinance?

McCARRON: I am not familiar enough with them to talk to it. I have read the correspondence which is before the committee from Reuben Owens, the Director of Public Works of the City of San Francisco in which he feels that 2011 would not profitably supplement the San Francisco ordinance.

McMILLAN: Thank you very much, Mr. McCarron. Mr. Katz, you are here this morning. Do you want to make a statement? Your name has been mentioned, and your operation referred to. Do you care to make a statement?

VOICE: Mr. Chairman, my name is S. R. Shiffman , Mr. Katz's attorney, and with the permission of the committee I would like to be seated alongside Mr. Katz.

McMILLAN: All right. Since your name was mentioned, you are free to make a statement.

KATZ: My name is Jack Katz, and I am the owner of Crescent Homes.

SHIFFMAN: May I make a statement, Mr. Chairman?

McMILLAN: State your name for the record.

SHIFFMAN: Sidney R. Shiffman. In view of the testimony of Lieutenant Hull here this morning, making it, I think, very clear, that my client is presently under investigation, with possibility of having a criminal complaint filed against him, I feel constrained to protect the interest of my client at this point and advise him not to answer questions with connection to his own operation. I think the committee will agree with me on this point, because I think this man is entitled to the protection to avoid any prosecution.

McMILLAN: I asked him if he wanted to testify.

SHIFFMAN: Yes. If there are any specific questions, Mr. Chairman,

that the committee members would like to ask that is fine, and I will advise my client on these questions.

McMILLAN: Does he want to make a statement? If he does voluntarily, he can do it.

KATZ: At this time, the only statement that I would like to make is that I have been in the housemoving business for over eight years, and I have operated to the best of my knowledge under the laws of the State of California and under the laws and ordinances of the City of Los Angeles, and as far as I am concerned, I haven't broken any laws or created any situations where laws were broken. In regards to the subordinations, people with the land who subordinate, I would like to make this comment. I, at no time, ever contact the sellers of this land. I do inform certain brokers around through the areas that I want to operate in -- these brokers are perfect strangers to me -- as a matter of fact, in many, many cases, I have never even met the brokers, don't even know them. The broker, the real estate broker, that is, contacts the people with the land and the situation in every case is explained to the sellers of this land in every detail. The amount of the trust deed that is created is set out on a document. It is insured by the Title Insurance and Trust Company. The seller of the land is informed approximately in the opinion of myself or other people, approximately what the value of the property will be after the house in completed, and in no way do we ever hide or try to fool or in any way -- I don't know what the word would be -- in other words, we hide nothing from the seller of the land. An escrow is opened. All of the conditions of the escrow are set out, laid out, spelled out for them. They have ample time to study it and when they agree to this it is just assumed that they are free white and 21 and they know what they are signing. They have every right and all the time necessary to investigate and find out if what I tell them is approximately the truth. Nobody forces anything on anybody.

If they want to sign these escrow instructions, fine, and if they don't, they don't, and that is all there is to it. We don't do this deliberately, and it is true that some of these deals have created some problems, but they were problems beyond my scope. They were problems that I didn't create, and had nothing to do with.

McMILLAN: Are you a licensed contractor?

KATZ: No, sir.

McMILLAN: You are a housemover?

KATZ: Yes.

McMILLAN: Are you licensed? By the state or by the city?

KATZ: I am a licensed housemover, yes, by the city.

McMILLAN: If you care to comment on this -- you heard what some of the previous witnesses testified about these houses being moved on and then never completed.

KATZ: I will only comment this far, Mr. McMillan. Certain situations arise which create this. It's never done deliberately, believe me. I would like to make another comment. At no time is there any chance for me, as a housemover, to make any money on these deals unless the house is completed, so we don't -- no deal is ever deliberately set up and a house not completed. And we have many, many instances where the houses were completed in record time. We have completed a lot of houses in 90, 120 days, many of them. Sometimes we do have problems, and these problems are, I suppose, what we are discussing now.

McMILLAN: In your escrow is there anything about the completion date?

KATZ: No. The escrow can't concern themselves with that part of it. This has to do with the city authorities, the building and safety department. They set out the completion date and it is also handled between the bonding company and the city.

McMILLAN: You heard Mr. Bernardi testify this morning, didn't you?

KATZ: Yes. Yes, I heard him.

McMILLAN: About the work never being completed?

KATZ: Well, it's true that sometimes this does happen, but it never happens deliberately. There are extenuating circumstances. Sometimes climate, sometimes bad financing. There are quite a few things that do happen that will create a problem like that. But it is never done deliberately as he inferred or as he implied. To bring out another point, one of the gentlemen that testified previous to me mentioned the word conspiracy. This is completely false. There is never any conspiracy in any way, shape, or form. Now, when the first trust deeds are created in escrow, like I said before, the amount of the trust deed is set out in a document that is insured by the title company. The amount of the loan that we expect to get is also spelled out in the subordination agreement so the seller of the land in every case at all times knows exactly what the size of the first trust deed is, and they should, let me put it this way -- they should know approximately what the property is going to be worth when it is finished. If I am wrong, then it is a matter of opinion. It was a bad guess. And sometimes it could happen. It doesn't happen very often, because I don't think there was ever any case where the property wasn't worth what the first and the second totaled to. In every case, the property in question was sold at, or had a value, a greater value, than what the first and the second totaled to. So in every case the second trust deed holder was protected from that standpoint.

McMILLAN: Are you a licensed real estate security broker?

KATZ: No, sir.

McMILLAN: The only license you hold is that of housemover.

KATZ: Yes, sir.

O'CONNELL: Mr. Katz, in the ordinary situation, who does the completion?

KATZ: The person that buys the house from me, to be moved. He's responsible for the completion.

O'CONNELL: You have nothing to do with the completion then.

KATZ: That's right.

O'CONNELL: Nor your nominee.

KATZ: Well, generally it is the nominee. That is true. My nominee has nothing to do with me. I sell a package deal to a perfect stranger sometimes. I sell it to a party that is interested in going into this kind of a business, and my nominee doesn't necessarily mean that it is me. As a matter of fact, it's never me. I sell my property on a package deal to a nominee that is interested in making money by the diligence of their own work and their own efforts, and when they buy one of these packages they can finish the house and make money by doing it.

O'CONNELL: Could you, for our enlightenment, describe a typical package deal, an example of the package deal that you offer.

KATZ: Well --

O'CONNELL: Let's say you have reached an agreement. You have the house. You bought the house just to be moved.

KATZ: I think I know what you mean. To do this, I would like to take five or ten minutes of the committee's time to lay a little bit of the background and inform the committee of what has been going on previously, because this would give you, or it will lay the foundation or give you the reasons why I am doing what I am doing now. When I first got into this business, the way to sell a house was to advertise it in the newspapers that you had a house for sale to be moved. So, generally someone with a lot or someone with a piece of land that was interested in improving this land would call us up and we'd meet them by appointment and would go into it, and they would pick out the house and we would arrive at a price and they would agree to buy the house moved on their land. We'd go into an escrow and it could have been cash

or it could have been partially cash, or it could have been a trust deed, partial cash and partial trust deed at that time, and we made our deal in the escrow and we moved the house on this person's lot, this individual's lot, and that was the end of my responsibility. That was the end of my deal. I wound up with a first trust deed that I did sell to the public at a discount, and we operated this way, through advertising in the newspaper and to individuals throughout the county and the area, for quite a few years. Now, operating this way, we found, resulted in quite a few problems. The biggest problem was that these individuals that we sold these houses to, just didn't have the know how, and in many cases didn't have the financing, the money to finish building. They were subject to many, many crooked contractors, and I mean that exactly the way I say it. I can give you innumerable cases where people would call a contractor in and ask them to put a foundation in a house and they would charge as high as $1800 for a foundation that normally cost $350 or $400. These people that we sold these houses to were afraid of bond by these crooked contractors. The result was that by the end of the year when the due date of the note became due, when it matured, 35 or 40% of these people had never completed their building, because they had run out of money, having fallen prey to these contractors, or else if they intended to finish it themselves they just didn't have the know how. They couldn't finish the house the way the Building and Safety Department required. They didn't have the know how, and in many, many cases, they were just left there helpless and I stepped in in many of those cases under those circumstances, loaned these people money, finished the buildings for them and you want to remember this was when I was completely out of the deal. I had sold the house to them. I had sold the trust deed to somebody else and my responsibility at that time had ended. And in many cases I had gone in and helped them out in the interest of them and also in the interest of the people who invested money with me, to buy these

trust deeds. I would step in and cure the situation. If it was with money, I would loan them money. If it was with know how, I would give them as much know how as I had, in other words, try to clear the situation so that the investor would get his money and the people themselves would have a finished building that they would have the use of.

LEVERING: Would you wait just a minute? Mr. Miller wants to ask you a question on this point.

MILLER: Mr. Katz, isn't the situation a little bit different than the way you are describing it? Isn't this true, that in the first place, the owner of the property who sells a lot to you, never sees the house that you are talking about until it is moved on to the property, so he has no occasion and no opportunity to evaluate what his equity is going to be in there, beyond your representation? Second, aren't the people who are your nominees and who are supposed to finish these houses --

KATZ: If you'll let me finish my story --

MILLER: I'll ask you several questions and then you take the time to answer all of them. Aren't these people, time and time again the same people? In effect, aren't they straw men such as several policemen of the L. A. Police Department who are moonlighting, and others of whom the city authorities already have cognizance and whom they are investigating; third, aren't these people who issue these first trust deeds not, in fact, reputable firms, operating in that particular area of financing, but aren't they a group of individuals --

KATZ: Mr. Miller, will you ask me one question at a time?

LEVERING: We'll ask him to ask you one at a time; then you'll get your turn.

MILLER: Well, it all ties in as one package, and this is the last question, Mr. Chairman. Aren't they, in fact, a group of individual investors who work over and over again with you and make their money either through the discounting of these first trust deeds which you

place usually anywhere from the first to the fifth day after opening the escrow with the owner of the land and in one case, of which the police department has knowledge and which they brought to the attention of this committee, one man alone has already made over $250,000 through foreclosures and through these discounts.

KATZ: Would you ask your first question again, please?

MILLER: Right. Isn't it true that the owner of the land usually does not see the house that you're going to moveon, until you move it on, and therefore has no opportunity to evaluate whether or not its final market value will be adequate to cover his equity plus the equity of the first trust deed plus the broker's sales commission and the incidental cost such as taxes, insurance, and the moving permits?

KATZ: The answer to that question is no.

MILLER: He does not see the land.

KATZ: The answer to the question is that -- I'm sorry, but you'll have to repeat that question again.

LEVERING: The question is --

KATZ: He has the right and he does see the property.

LEVERING: Does he see the house before it is put on the land?

KATZ: He has the privilege. He has the knowledge of the location of the house. He is told -- as a matter of fact, if I had a copy of my escrow instructions here, I would show you. The specific location of every house is put into the escrow instructions, and that specific house goes on a certain specific lot described by legal description.

LEVERING: In other words, he can go and look at it --

KATZ: He's got that in his hand, in every case.

LEVERING: O.K. Now what's the second question?

MILLER: With regard to the first question, this is not true. We have documentary information to show that this is not the case. The second case is this. Is it not true that by and large there is a pattern

of repetition of the nominees that you specify in your escrow instructions the people who are supposed to finish these houses properly to the satisfaction both of the city and the performance bond, and second the original owner of the land -- isn't there a pattern of repetition there including certain members of the police department and others who are moonlighting on this deal?

KATZ: The answer to your question is this. There are people who have bought these houses from me, or these packages from me in previous years and have made money with them. They have come back to me and bought more deals, and it is true that you will find a nominee more than once on my records, and in the records of the escrow, because in previous years they bought these houses, finished them out, sold them, made money with them, and everybody concerned was satisfied, including the second trust deed holder.

LEVERING: What is your next question?

MILLER: May I comment on that question?

LEVERING: Yes, go ahead.

MILLER: Just a comment. As of last week, the Building and Safety Department of the City of Los Angeles and the Police Department had a list of over a hundred houses that had not been completed up until a month or so ago, and which you only started to complete under pressure from the bonding company and under threats from the Building and Safety Department. Isn't that true?

KATZ: No comment on this.

MILLER: All right. Now, the last question is this. Doesn't the same pattern of repetition exist among the investors? Doesn't this turn out to be the case? These investors are not people who are in recognized lending institutions, but they are individual investors who over a period of years, time and time again, buy your trust deeds, and make their money two ways. One, through the discount on the trust deeds, second,

through the foreclosure when the house is not finished in time and as a corollary to that question, isn't it your practise to place such trust deeds and sell them within one to five days or very soon thereafter upon the opening of the escrow with the original owner of the land, and, without his knowledge, that you are going to place that trust deed, so that he is responsible all during the escrow, whether it is a 60-day or whatever, for the interest on that first trust deed?

LEVERING: That is a compound question.

KATZ: Would you please break that question down, so that I can answer it. I would like to hear the first part of the question again. I am sorry. It was so lengthy I don't remember it.

LEVERING: The first part of the question, as I recall it was, aren't these the same -- these financial institutions, as I interpolate the question, are not, according to Mr. Miller, regularly established finance houses, but private individuals, perhaps.

KATZ: Yes. The answer to that is yes. Private parties. That's true.

LEVERING: Now, what's the last part of the question? I forgot that now. (Aside conversation between Miller and Levering) Oh, yes, the last part of the question was, do you place these trust deeds from one to five days, without the knowledge of the original owner of the land?

KATZ: Not true. No.

LEVERING: Thank you. Any questions from Mr. Katz? Thank you, Mr. Katz, and thank you, his attorney.

BRADLEY: Mr. Chairman, excuse me, just a minute. I think the record ought to show that the witness was not under oath when he testified before the committee, and that he testified voluntarily.

LEVERING: That is correct.

KATZ: I was under subpena.

BRADLEY: All right, then he testified voluntarily under subpena.

LEVERING: That's right. Thank you very kindly, gentlemen. The meeting is adjourned until 1:30.

. . . RECESS FOR LUNCH . . . .

Chairman McMillan: The committee will come to order. The first in order this afternoon is House Resolution 440 by Assemblyman Hawkins, having to do with the efficiency of the state government, and we are particularly interested today in the matter of discounts to state employees on airlines and possibly hotels. Now we have with us Mr. Earl Williams from the Department of Finance. Will you come up here, Mr. Williams? Will you state your name?

WILLIAMS: My name is Earl S. Williams, and I am with the State Department of Finance in the capacity of State Traffic Manager, concerned with transportation problems in the state.

McMILLAN: Some weeks ago, we had a meeting of the Public Utilities Committee in San Francisco. We were discussing the control of the Public Utility Commission over intra-state air transportation and the matter of discount on tickets to state employees came up, and we included it on our agenda today. I think it is a subject well worth exploring. I have no preconceived ideas on it, and I don't think any member of this committee has, but it does seem to me that there is a great possibility for the state of California to save a considerable amount of money. The airlines and other public transportation companies I think offer a discount of 5% to any travel agency, so I am wondering, and I think the committee would like to know if it would be feasible to make some arrangements with the airlines to get a similar 5% discount. If not, perhaps we could go into the travel agency business on the state level and save this 5%, which would amount to a considerable sum over the year, all the traveling that the state employees do. I think it is a subject that is well worth exploring and Mr. Williams, you are

representing the Department of Finance and the Traffic Manager -- is that your title -- for the entire state.

WILLIAMS: Representing state agencies in their capacities as shippers and users of the services of the transportation companies, and not in a regulatory capacity.

McMILLAN: Mr. Williams, I have discussed this subject with you before. Would you like to make a statement on it, or would you rather answer some questions propounded by the members of the committee?

WILLIAMS: Well, first I might lay the foundation for consideration of the subject and then be open to questions on the point. Probably I might clarify the issues, because there are both legal and practical issues involved in this problem. In my opinion, under existing law, it would be illegal for airlines to grant rebates of commissions to state government under that guise, for the travel agencies are operating theoretically on the basis that they are performing services for the airlines, for which the airlines might otherwise be required to perform themselves, and if they were to grant these rebates back to the traveling public, this would be considered illegal rebating. It is rather interesting to note that the Kaiser Industries has a central travel bureau in which they have 14 people employed, I understand, handling travel matters for all the Kaiser Industries' people. The airlines have placed an airlines representative in their office at their own expense to issue tickets, but in that case, where there is a large volume of traffic, I am informed there is no rebating of any commission. Now, however, the second leg of legality of this issue is the legality of airlines granting reduced rates to governments. Under the terms of Section 530 of the Public Utilities Code, there is a provision under which common carriers may grant free or reduced rates to persons for the United States, state, county or municipal governments, or persons or property for charitable and so on -- these are unrelated. Of course the Public Utilities Act

applies only to surface common carriers, and not to airline carriers. The California Public Utilities Commission has claimed jurisdiction over the fares of airlines under the constitutional provisions relating to transportation companies. Now, the Legislature has not attempted to define or set up an act or to extend the Public Utilities Act to cover air transportation companies. So that leaves us without a similar provision for airlines that we have for the other surface common carriers.

McMILLAN: What did you say -- that the Public Utilities Commission does have some jurisdiction over the fares of airlines?

WILLIAMS: They have asserted their jurisdiction some time ago, and the case went through the courts, and the courts did find that they did have jurisdiction over --

McMILLAN: For intra-state.

WILLIAMS: For California intra-state.

McMILLAN: Not in the inter-state.

WILLIAMS: Not inter-state. Now the Commission, in asserting this jurisdiction, put out a tariff circular in which they provided specifically for certain reduced rates for certain people, but they did not extend those to persons for the governmental agencies, and I do not know what their legal ruling would be in regard to such reduced rates, although I believe that they would hold that they would be unacceptable to the commission, under their tariff circular. I tried to get an informal legal ruling from the Public Utilities Commission on this question, for one reason. I was instructed by our Director's office to institute negotiations with the airlines for the purpose of determining whether they would voluntarily grant reduced rates for the transportation of persons for the state government. The ruling was somewhat uncertain in this respect, and I believe --

McMILLAN: You didn't make any progress with the airlines.

WILLIAMS: I did not as yet institute negotiations for the reason that it seemed appropriate before doing so to find out whether they could legally grant such a reduced rate. If we asked them for the reduced rate and they could not legally grant them, and there is some question as to whether they could under the holdings of the Public Utilities Commission, they would simply reply that it would be unlawful for them to grant such reduced rates. With that general statement --

McMILLAN: What did you do, ask an Attorney-General's Opinion?

WILLIAMS: I did not. No, sir. I asked the Public Utilities Commission direct for such a ruling.

McMILLAN: Did you get a ruling?

WILLIAMS: I did. I got a ruling which might be classified as a ruling. I don't know whether you are interested in my reading this into the record or not.

McMILLAN: What is the substance of it?

WILLIAMS: Well, they said that under a general order, it provides for certain free or reduced rates by air transportation companies, did not provide for such free or reduced rates to persons for the state government, such as authorized in Section 530 of the Public Utilities Code for other common carriers. Then they mention that the jurisdiction of this Commission over operations of air transportation -- it is discussed at some length in People vs. Western Airlines, Incorporated, which cite decisions upholding their jurisdiction. They did not come out directly and state that free or reduced rates for the state government were unlawful or illegal, but you could draw the inference from this that they would so hold if such rates were filed.

McMILLAN: Could you give us a rough estimate of what a 5% discount to state employees traveling in this state would amount to?

WILLIAMS: I sought to determine this information, and to find out if it was available anywhere, and apparentlyno one has ever made such a

study, and there are no central records that provide such information. I asked the office of the State Controller, whose office would be, perhaps, the only one that could make such a determination, whether they had ever made any study of this from the various travel expense vouchers, and they told me that they have not, and that it would be a costly study to make, that it would mean going through all the travel expense vouchers in their claim schedules and that they did not propose to make such a study unless it was directed as its cost might be considerable.

McMILLAN: Doesn't the finance department or the controllers' office have an amount that they pay out for travel for the state employees? That shouldn't be too difficult to ascertain. Air or rail. It doesn't make any difference. There is very little rail traffic left today.

WILLIAMS: I didn't ask the question specifically. The controller, on the total of all travel, including hotel expenses and all the travel expense vouchers, whether they might have such information, because I thought that it would contain so much that we couldn't reach any conclusion with respect to the cost of airline transportation as segregated. I haven't been able to find the figures and apparently no one has made any such study, and I guess the only way we could determine that would be to formally ask the state controller for such a study.

McMILLAN: Have you any idea roughly about what it might be? It would run into millions, wouldn't it?

WILLIAMS: Somebody made a horseback guess, it was about $300,000 a year for air transportation, but I can find no authority for any such an estimate.

McMILLAN: What is that -- a month?

WILLIAMS: A year, annually.

McMILLAN: That would include all state -- transportation of prisoners, and the department of Mental Hygiene, Youth Authority?

WILLIAMS: The reason I am not giving any credit to this, it is a sort of a guess without any definition and without any basis, apparently, in fact. I certainly wouldn't rely on any such an estimate in my own work.

McMILLAN: I want to ask you one more question, Mr. Williams. Is there any reason, in your opinion, why a special bill or agency could not be set up under the Department of Finance to purchase all tickets and make reservations -- all airline tickets and possibly hotel reservations, and take advantage of the discount that is extended to regular travel agencies?

WILLIAMS: There has been a proposal, or there was, some time ago, to set up a travel bureau in the Department of Finance to handle, issue tickets, deliver tickets, exchange refunds, help prepare itineraries and do all the other things for State Government as a whole, on the basis not of any cost reductions but on the basis that it might be successful in saving the productive time of important people by providing a central place to issue all tickets and to distribute them and handle them. There is precedent for this sort of thing in the Kaiser Industry and other private industries around the country. However, the state government would pose a very difficult question, and it might require the budgeting of a considerable amount of money to institute the personnel. For instance, they would have to have personnel at Los Angeles and San Francisco and Sacramento. The very dead minimum in my opinion at the start would be at least seven to 20 people. The question is open in my mind whether this would be economical and efficient over all. We have never made any deep study of the subject and I recommended that such an organization not be set up. I do not believe that unless there is appropriate legal authority for reduced rates to the state, not rebates from the airlines, I don't think that the state government, if they established such a bill, could legally receive the commissions that are

paid to travel bureaus, commercial travel bureaus.

McMILLAN: Why not?

WILLIAMS: The provisions of law, the Public Utilities Act, as an example, require that published tariff rates be applied, subject to certain exceptions, and that rebating of any of the rates or fares to the users or shippers would be unlawful, would be illegal rebating, and there is a little distinguishing difference between offering a reduced rate to the state and rebating commissions. Perhaps maybe some more competent legal authority than myself might have to pass upon this, but I feel on the basis of my experience that it would be considered illegal.

McMILLAN: Is that in the Public Utilities Code?

WILLIAMS: I believe so.

McMILLAN: That is the basis or the authority, is it?

WILLIAMS: Yes.

McMILLAN: Couldn't the Public Utilities Code be amended by the Legislature to exempt state employees?

WILLIAMS: In my opinion, if this is going to be the desire of the Legislature, I would express the opinion that it might be better done by having the state have a flat reduction that would be granted them, not as a rebate to a travel agency, but say a 5% reduction in regular rates for persons on state business, such as they can already do.

McMILLAN: What do you mean -- you say they can do that now?

WILLIAMS: On surface carriers. Surface carriers have this provision in Section 530 of the Public Utilities Act, which permits common carriers to grant reduced rates to the state government.

McMILLAN: Railroads and busses and so forth. But is there anything prohibiting the airlines?

WILLIAMS: Inasmuch as the Public Utilities Act does not apply to airlines, these provisions, these enabling provisions are not applicable to common carriers by airlines, unless -- because the jurisdiction of the

Commission does not arise under the Public Utilities Code, or Act.

McMILLAN: The Public Utilities Code could be amended, then, to coincide with the regulation of the surface transportation.

WILLIAMS: The Public Utilities Code or Act could be amended to include arilines, under which they would be regulated under the same provisions as surface common carriers are regulated under.

McMILLAN: The State Public Utilities doesn't regulate rates on interstate surface trasportation.

WILLIAMS: On California intra-state traffic, or commerce, they have authority, under Public Utilities to regulate all common carriers, not including airline carriers. I have no further statement to make, other than the fact that we are continuing to find out if thereis some basis for -- legal basis for granting the rates, but let's assume first that the law was changed, and we now have the right of airlines to grant reduced rates to the state. There would be nothing in the act to compel them to do so, and the way this has been applied traditionally, to surface carriers over the years, is that it is purely voluntary on the part of any common carrier to grant the reduced rate. Now, one further thing, I don't know whether you would be interested in provisions applying to interstate traffic, to interstate commerce which would apply to the same subject matter. Perhaps maybe the committee might be interested in how this situation is handled on interstate traffic.

McMILLAN: I think so.

WILLIAMS: There is no provision in the Civil Aeronautics Act of 1958 as amended, which permits airlines to grant free or reduced rates to governmental persons traveling on official business. However, the Civil Aeronautics, or some of the airlines have granted reduced rates for military personnel, and the matter apparently has been studied by the Civil Aeronautics Board, and they have found that it would not be discriminatory for airlines to grant reduced rates for military personnel.

But I can find nothing in their regulations or holdings that extend this to other than military personnel, and as far as I can determine the practises of airlines have been only to grant rates to military personnel or members of the armed services. However, there was an interesting variation of this when the Pacific Airlines recently filed a tariff with the California Public Utilities Commission in which they named special rates for all Department of Defense Personnel, apparently whether they were in the military or armed services or whether they were civilians working for the military, and apparently the Public Utilities Commission accepted this tariff for filing. I suppose that --

McMILLAN: That's almost a precedent, then.

WILLIAMS: It would be, for but one reason. And this, I think, such interpretations and explanations should be made by them, and I sort of stick out my neck when I do it, but I think that they were -- it seems the Legislature in 1955 amended Section 530 of the Public Utilities Code, eliminating the right of common carriers in this state to grant reduced rates to governmental agencies on freight. In other words, as far as freight was concerned, prior to that time, the Act provided that any common carrier could grant reduced rates to the State. The Legislature passed an act which, an amendment to Section 530, which removed the right, except on application to the Commission and a finding by the Commission or the Commission so held, that such rates were reasonable, and this is a very difficult thing and long and expensive to do. Well, the Federal Government took this matter to the courts and claimed that the State of California could not interfere with the right of the Federal Government to negotiate special rates with common carriers. The circuit court upheld the Federal Government. It went to the Supreme Court and the Supreme Court upheld them, so immediately the Federal Government now proceeds to negotiate reduced rates with common carriers, not withstanding the provisions of the Public Utilities Act. And perhaps

the Commission thought it would be a futile gesture not to accept this tariff, because of the precedent in the court case.

McMILLAN: Mr. Williams, you stated that you didn't think that it would even pay the State of California to go into this business, that the overhead, the initial charge would be too great. I think the State of California does lot more traveling than the Kaiser Industries does, and it seems to pay with the Kaiser Industries to set up this travel bureau, so I don't think there is much to your argument that the initial investment would be too much. Kaiser isn't going to invest in something that isn't paying off.

WILLIAMS: I think there is a great deal of merit to it, Mr. McMillan. My experience has been such that when it comes to budgeting personnel to make such an operation function effectively and efficiently, that this has been an extremely difficult thing to attain, and this goes hand in hand with it, it might not be effective. And if it doesn't include with it some reduction in fares to help partially offset the payment of it, it might cost more money than the saving.

McMILLAN: The cost could be estimated, I suppose. Pardon me just a moment. I want to find out if there is any representative of the airlines in the room today. All the airlines have been notified of this meeting, and of this matter coming up today, and they have been invited. No one was subpenaed, but it certainly shows a lack of interest on the part of the airlines to cooperate and work with this committee in solving this problem. I think that it's time that the Legislature gave some very serious consideration, to either setting up its own travel bureau, and if that is not possible, probably we could create an airplane pool similar to our auto pool that we have in the state. I know that we held one meeting on this matter in San Francisco and we had a very enthusiastic response from the Director of Mental Hygiene, from the Department of Corrections and Youth Authority, and many other

state agencies, who feel that it would be very beneficial, and a fine thing to do. Now, probably the airlines would like to have us go into the airplane pool if they don't want to cooperate a little bit with the Legislature. That is not your problem, Mr. Williams.

WILLIAMS: I might say this, that the Department of Finance is currently studying the problem of some entrance or expansion of State airplanes and use of charter planes for a certain limited use. It is now in the course of a study on this problem, although we have in the hearing room here, Ron Clark, who is putting the final touches on a study of this matter, and if there is anything the committee wants to know in regard to this, I would ask him to give the answers.

McMILLAN: Any questions?

BRADLEY: I was just thinking, Mr. Chairman, that probably if we were offering the airlines a 5% increase, they would be here.

McMILLAN: Are you proposing that?

BRADLEY: Not unless I get some green trading stamps.

McMILLAN: I am not that interested in their presence. Any other questions? Well, Mr. Williams, I hope the Department of Finance will take some action on this, or show a little more interest in setting up such an agency, and see if something couldn't be worked out. Have you ever tried to negotiate with the airlines?

WILLIAMS: No, but I intend to do this, to proceed. I am not dropping it here, except we haven't reached this point. Having spent my life in this field, I almost know the reaction of the people on the other side, because I have been on all three sides of this, namely, I have been on the carrier side and the shipper side, and in a regulatory side before I came here, having been a hearing examiner for the PUC for a number of years. I know just about what their reaction is, and I felt that before you ask them to do something, it should be clear as to whether it is legal or not. Now, it may be in your other committee

hearing that there may be changes in the Public Utilities Act proposed to include airlines in this act, and if they were so included, and the provisions of Section 530 remained as they are today, there would be no question about the legality and the lawfulness of airlines granting reduced rates to state government.

McMILLAN: You haven't made any inquiries along this line up to date?

WILLIAMS: I have made inquiries as to the legality, but I haven't yet filed a formal request with the airlines, although I intend to do so.

McMILLAN: Well, I should think that you would, because there is a huge amount of money involved in the thing, and I think that we are trying to save the state some money, and this is one good place that we could start it. If the airlines can afford this 5% kickback to travel agencies, I see no reason why they couldn't also afford the 5% kickback to state employees, if we can negotiate with them through a central agency, same as the travel agencies do.

WILLIAMS: I see quite some merit to that position.

McMILLAN: And there is not reason why we shouldn't also, through this agency, make hotel reservations to take advantage of the 5% discount or whatever the hotels allow the travel agencies.

WILLIAMS: Is it the desire of the committee that I recommend to the Director that we enter into a study of the economy and feasibility of such a travel bureau?

McMILLAN: It certainly is, and I am presenting this matter to the joint legislative budget committee for special study for our next meeting, which will be in December. They are going into all the different facets, that is, the airplane pool and the possibility of separate agency in the Department of Finance. But I think it would be well for your department, probably, to work with the joint budget committee.

WILLIAMS: I would be glad to do so, and to communicate your ideas

to the Director of Finance.

BRADLEY: Mr. Chairman, could I ask one question? Do the state employees buy their tickets out of their pocket and then get reimbursed upon filing a voucher? I know the legislature does, but is that the general practice? Among the state employees?

WILLIAMS: Well, there are three ways that they have been doing it. I proposed, for my air travel down here, in order to do that, I paid out of my pocket for it, and I will file a travel expense voucher, but those that travel more frequently usually have airline credit cards, which they get, on credit cards, and some have -- oh, there are various methods -- you can get an advance -- some of them get an advance on travel expenses out of the revolving funds of their agencies.

BRADLEY: The point I am making is, that if we were to continue the present practice of purchasing airline tickets for example, would this be a 5% savings to the state, not a source of income --

McMILLAN: That's right. It would be a state savings.

WILLIAMS: It would be a source of income, that is, it would be a savings, it might be applied to the administrative cost of operating the travel bureau, if we did such a thing and had centralized ticket control. But we could only do that in the major centers, not statewide.

McMILLAN: Well, the 5% discount would be 5% saved by the state. Whatever the state does with it from then on -- that's a different matter.

WILLIAMSON: Mr. Williams, is that $300,000 figure that you gave us -- does this represent the aggregate of all air travel done by state employees?

WILLIAMS: Well, I might say that this figure was given under somewhat the pressure of an inquiry as to whether any such figure had ever been developed, and this figure I can't find. It was in some merit award suggestion or some estimate was made by someone else and not knowing the basis for it, it could be $600,000, it could be $100,000, as far as I

know. I just don't know, and I haven't found or seen any figures that I would accept as worthy of considering that that was it, or even approximately it.

McMILLAN: Could you attempt to get the figures on that, Mr. Williams, or wouldn't that be possible?

WILLIAMS: We could make a special attempt to do it. It might be that it would have to be accomplished by a request to the State Controller to develop these figures, because he might contend that this is going to cost umpty-ump dollars of his budget, and if a legislative committee requested him to make such a study, he would probably be willing --

McMILLAN: Probably it would be more appropriate for the Budget Committee to do it.

WILLIAMS: Yes, I would think so. I tried this on my own and when it comes to a thousand man hours or something, we don't get too far, in asking another department to incur that expense.

McMILLAN: Thank you very much, Mr. Williams. Is Phillip Schott here? From the Legislative Budget? Francis Stanton? Did you want to make a statement?

STANTON: No, Mr. Chairman, not at this time, thank you.

McMILLAN: Will you come up here? I would like to ask you a question, anyway. Mr. Frank Stanton.

STANTON: Francis Stanton. I represent the California State Employees Association.

McMILLAN: Mr. Stanton, do the members of your association receive any rebate or any discount from travel agencies, hotels?

STANTON: No, we do not, at the present time. There are travel agencies that advertise in our magazine, but we get nothing from it except the advertising.

McMILLAN: Well, don't you get group rates on air travel?

STANTON: Not to my knowledge.

McMILLAN: Don't you get group rates in hotels?

STANTON: Well, this -- through our headquarters office, for instance, we have a general council that we recently had in Sacramento, yes, we do get group rates, but by special arrangement.

McMILLAN: You have what -- a general counsel?

STANTON: Once a year the C.S.E.A. has a general council in some location in the state. It was held this year in Sacramento. We made special arrangements with the hotels up there, that by renting the rooms, we would occupy the rooms two people to a room, and the rate would be $5 per person.

McMILLAN: What about the airlines?

STANTON: The airlines -- the individual goes and pays it himself and is allowed so much for travel.

McMILLAN: Is there any discount from the state? By going in a group?

STANTON: No, not that I know of.

McMILLAN: Doesn't the airline give you group rates if you want to travel -- for instance, a group going to Europe or anyplace?

STANTON: Not as an association. Now, there are travel agencies that work with the association that sell out to our membership travel trips, like to Hawaii, or Europe or wherever it might be, but we as an association get no part in this, no.

McMILLAN: All right. Thank you. Any other questions? Do you want to make any further statement?

STANTON: No, only that we as an association are interested in economy in government and good government and I was very interested in what went on here, and came here more in the nature of an observer than to make any comments.

McMILLAN: You also appreciated the interest the airlines are showing in this problem.

STANTON: Yes, I did. I noted that and I feel that it would have been very well for them to have showed up here to show that they had

some interest in government.

BRADLEY: Mr. Chairman, Mr. Cusanovich said that the airlines have flown the coup.

McMILLAN: All right. Thank you very much for appearing. Now, we are going to take up House Resolution 274. Mr. Ribnick. State your name, will you?

RIBNICK: Gerson Ribnick. I am Executive Director of the Appliance Profession Association of the State of California, incorporated.

McMILLAN: Mr. Ribnick, you asked for another hearing on this. You submitted your paper, didn't you, to the committee? We have it for the file. We have gone into this thing before and we have pretty well covered the subject, so I am going to allot you about ten minutes to present your case, and that is the end of it, because you have taken up a lot of time of this committee, and you are on here just as a courtesy.

RIBNICK: I appreciate that very much.

McMILLAN: We've got your statement, so just highlight it if you want to, make a few comments.

RIBNICK: Right. At this particular time the Appliance Professions Association is in the midst of a petition to the State Contractors' Licensing Board, for a division of Contractors' License for the Home Appliance Installation Industry. The reason for this move is about the certain changes that have come about within the Contractors' License Law that have opened up this door. My paper, presented and passed out to the group, is asking for the support of the Legislature to the Contractors' License Board for the adoption or for the responsibility over this industry without having now to necessitate going back to the Legislature. That's the only reason for appearing here.

McMILLAN: What are you trying to do?

RIBNICK: We have presented a petition for a division of State Contractors' License for the Home Appliance Installation Industry, to

the State Contractors' Board. A copy of this petition has been sent to each one of you. I believe it has been in your office now for several months. I didn't realize that this hearing was going to come about until I was notified of the date. We didn't ask for it, other than through your resolution which we appreciate very greatly, that this hearing was going to come forth, because when we made that move, we thought that we wouldn't necessitate a further hearing of your resolution, but we certainly do appreciate your effort in its behalf. If the Contractors' License Board assumes this obligation, then there will be no necessity for coming back to the Legislature in this particular area. Perhaps in some other area, but not in the installation of home appliances, anyway.

LEVERING: Do they have the authority to do that?

RIBNICK: This, of course, is in the Attorney General's office at the moment, and we don't know that. We hope they do. Our attorney says so. It is up to the Attorney General's office at the moment.

McMILLAN: Mr. Ribnick thought he would make better progress with the Contractors than with the Legislature.

LEVERING: You couldn't get it out of the Legislature, so you go to the Contractors'.

RIBNICK: No, really not. There have been some drastic changes in the Contractors' State License Law itself, just within the last year. Prior to that we didn't think we had a chance of going to the Contractors' License Board. Because of these changes, and of course with changes in our own industry, too -- we all realize that at one time only about 2% of the appliances made in the United States were built in, now the figures are that over 50% of all the ovens and ranges manufactured in the United States today are built in, and we are over the 40% of overall appliances that are built in products today, and if this figure continues, we're going to have an area of 80 to 90% built in appliances and only about 10 to 20% free standing, so again, it is going more and more to the

construction industry, which we inevitably see, and we hope that the Contractors' State License Board realizes it as well and takes the responsibility upon themselves. I have completed my statement. If there are any questions -- if there are any people that are going to argue the case, I would like an opportunity to rebut any statements that they might make.

McMILLAN: Well, I don't think anyone else is interested in this problem right now.

RIBNICK: Thank you very much.

MELEY: Mr. Chairman, may I speak?

McMILLAN: Yes. Are you speaking on this 274? All right.

MELEY: Yes. My name is Anthony Meley. I represent the Sheet Metal Contractors' Association of San Francisco. I also speak for the Sheet Metal Contractors' Association of Southern California. I shall make my statements very brief. We are opposed to this bill, and I would add just two more statements. One, you cannot legislate by licensing character or integrity. Two, I cannot understand for the life of me, why anyone or any group voluntarily and unilaterally will ask for licensing. It is beyond me. And it does remind me of that story, and this is an old chestnut, and that is of the man that said, I like to get hit over the head with a rubber hose, and when asked why, he said because it feels so good when they stop. Thank you.

LEVERING: I don't get that point.

McMILLAN: I don't think you got your point over exactly, but it will be in the record anyway, and we'll study it.

LEVERING: We'll try and figure it out.

McMILLAN: Thank you, anyway. Now, let's take up Assembly Bill 2341, Property Appraisers. Mr. William McCloy. Is he here? Is Mr. Hotchkiss here? State your name, please.

HOTCHKISS: L. M.Hotchkiss, San Francisco. This bill came up for consideration before. I think it was Mr. Hanna that made the statement

that this legislation -- they thought that everyone agreed that something was necessary and it was referred to this committee, I thought it was for drawing up a bill, but it was evidently for recommendations as to what should be recommended to the full committee, this being the interim committee.

McMILLAN: What is your position? Whom are you representing?

HOTCHKISS: I am representing the committee in favor of this Assembly Bill 2341. For licensing appraisers, yes, sir. I would like to make a statement in that we want to offer this bill as a basis for proper legislation subject to certain changes or amendments that we would like to bring to your attention. You gentlemen have this bill, I believe. On page 2, of course that should be brought up to date. This bill was entered before and the dates would have to be changed on that. On page 5, line 29, we feel, speaking in behalf of the appraisers, that 23 years of age, line 29, should be 25 years of age. We feel that that is too young. That was our original request, but somewhere down the line that was reduced. We also feel that under (c) two years, should be five years experience. And below, where we say in line 40, 9864, "Graduation from a school or college, or courses of instruction approved by the board" and so on, may count up to two years of practice, we would like to have that three years of practice, instead; would count for three years instead of two.

McMILLAN: Well, those are technical changes.

HOTCHKISS: Yes, technical changes that we feel should be.

McMILLAN: Why don't you tell this committee why you are for this bill?

HOTCHKISS: We are for the bill, sir, because we feel that it is in the best public interest, and it is necessary, both in behalf of the public, and in behalf of the appraisers. This is a bill that will give the appraisers recognition by the public as a profession we have worked

for so many years to dignify. At the present time, as you gentlemen probably know, anyone may be an appraiser. All he has to do is put his name in the phone book and his shingle, and he is an appraiser. Every day in their offices clients call and they say, "Are you a licensed appraiser?" and it takes a half hour to explain to them that there is no such thing in California as a licensed appraiser, and I think from the subsequent conversation that frequently they don't think they are telling the truth, merely that we are not licensed and we want to get a job. Licensing has been recognized as far back as New York. A couple years ago at one of the American Society of Appraisers conferences, Judge Settle (?), the head of the Circuit Court in New York, digressed from one of his speeches and asked us why we didn't have legislation licensing appraisers, so that when a judge or an attorney or a trust company wished to get an authoritative appraisal they could turn to something and find out who was accredited by the state. There are also many other reasons, for instance, just recently I noticed in the paper here that Preston Silgo (?) is the Chairman of the Savings and Loan, and he made in his speech, this is November 1st here, he pointed out that there should be appraisers, independent appraisers. They should have no interest in the loans, and so forth. That is something that they have been concerned about, on account of the furor that there has been over the ten percenters and so forth. Before the legislature convenes, if you gentlemen wish, I can furnish you the names of several hundred appraisers in California who are in favor of this legislation.

McMILLAN: Does any other state license appraisers?

HOTCHKISS: Not at the present time, no license such as this, which is an all-inclusive license. Of course it has a grandfathers clause which is necessary. We can't legislate anyone out of business, and we don't want to, but it does have regulatory features --

McMILLAN: What does?

HOTCHKISS: The bill. This bill.

McMILLAN: I mean, does any other state have --

HOTCHKISS: No, we are pioneers in it. Some of them -- one or two states cover certain features of appraising in real estate, and so forth. None has all the features that we have here. This is for, you might say, the protection of the public in addition to the recognition of the appraisal profession.

McMILLAN: Can anyone today be an appraiser? If he can get the job. He can hold himself out, advertise in the classified ads, as expert appraiser and have absolutely no experience?

HOTCHKISS: Yes. A man, woman, or child may be an appraiser. There is no protection to anyone.

McMILLAN: No supervision, no license, qualifications.

HOTCHKISS: No license, no supervision -- anyone is an appraiser.

LEVERING: Isn't it also true that the appraisers do get recognition if they become members of what I think is called the AIA -- the NAI.

HOTCHKISS: The NAI. They have recognition in certain circles, yes, also the Society of Residential Appraisers is a very fine society.

LEVERING: Aren't they looked up to as very well qualified people?

HOTCHKISS: They are. Very fine people. And then there is the American Society of Appraisers. These other two groups that you mentioned, the NAI and the Society of Residential Appraisers, SRA -- they are only interested in real property, whereas the American Society of Appraisers is interested in all types of appraising. We have in our membership all types of appraisers, chattels, and so forth. And then there is the Farm Management group, and they appraise farms, and then there is the American Right-of-Way Association, and they are also looked up to very highly, and they of course handle Right-of-Way and real property appraisals.

LEVERING: Is it your idea that one type of a license would fit all types of appraisers? Certainly you wouldn't have a man that --

HOTCHKISS: No, sir. That's in the bill.

LEVERING: That's in the bill. Well, this is the same bill we heard last session, isn't it?

HOTCHKISS: It wasn't really heard. It was sent over to this committee for hearing.

LEVERING: We heard it in committee.

HOTCHKISS: Only portions of it.

LEVERING: Well, we had a bill before us along time.

HOTCHKISS: That was another bill. That was a bill up for the certification of appraisers.

LEVERING: I know that I had the bill and very carefully studied it, some appraisers' bill.

McMILLAN: Mr. Hotchkiss, what is this association you referred to -- NAI, is it?

HOTCHKISS: Yes. That is the American Institute of Real Estate Appraisers.

McMILLAN: You have to be a realtor to belong to that?

HOTCHKISS: Not a realtor, I do not believe. I don't belong to it, because I do not do that type of appraising, but you have to pass examinations and be qualified.

LEVERING: It takes five years.

McMILLAN: Does this association hold the examination?

HOTCHKISS: They hold their own examinations, the same as the Residential Appraisers, and the American Society of Appraisers, and the farm group.

McMILLAN: It is my recollection that you had to belong to a local realtor association before you were eligible to even take that examination.

HOTCHKISS: That is quite possible. I am not an authority on it.

McMILLAN: I think that was brought out. Also it was brought out that no colored person is ever licensed in the Los Angeles Realty

Associati on.

HOTCHKISS: That may be. I am not one of those. My branch of the appraising is residential contents and fine arts, small machinery and such. I do not do real estate myself. But the American Society of Appraisers, to which I belong, we do have members other than the white race.

McMILLAN: Is that another association something like the NAI?

HOTCHKISS: The NAI only appraise real property. In the American Society of Appraisers we have members who do chattels -- all kinds.

LEVERING: I think, Mac, they can join the NAI, if they are a member of any realty board. You know the colored people have their own realty board. There are colored members of the NAI, very qualified people. You're getting this confused with the fact that the Los Angeles Realty Board wouldn't let any -- didn't have any colored members. This is a different situation, different subject.

HOTCHKISS: I might state also that this is a self-supporting board that we are proposing here, and you gentlemen may recall last year that one of the representatives of the real estate commission stated when he was asked how many might apply for a license, he came up with a figure of 15,000, which I believe is a little bit high, from my own researches. It probably would be closer to 5,000, and they would be weeded down from 5,000, which would make it thoroughly self-supporting.

McMILLAN: Thank you very much, Mr. Hotchkiss. Any further questions? Mr. J. Frank Park. Did you want to testify on this?

LEVERING: He was going to speak on House Resolution 274, not on the appraisers' bill. He just left.

McMILLAN: How about Philip Abrams? Do you want to speak on this? Fer or agin it?

ABRAMS: Agin it, qualifiedly. My name is Philip Abrams. I am a consulting engineer in Palm Springs, California, and I represent the

California Legislative Council of Professional Engineers. The California Legislative Council of Professional Engineers does not, in essence, object to this licensing of persons who express an opinion as to the value of property. The objection of the California Legislative Council is an objection which relates to the use of the title "Licensed Appraiser". Civil Engineering in essence, uses appraisal work or does appraisal work within the scope of their license law, and we feel that this type of licensing should exempt the civil engineering profession from the appraisal law that is proposed before you, and should also give the civil engineer the right to the use of the title in the event that they appear in court, so that they would have an equal right with the licensed appraisers in legal matters. This, in essence, is my statement, and if you have some questions, I would be very happy to answer them.

McMILLAN: Thank you very much. A. D. Reed? Mr. J. W. Marshall.

MARSHALL: My name is Joseph W. Marshall. I am President of Marshall and Stevens, an appraisal organization. My reason for being here is that the appraisal organizations, corporations and partnerships are concerned with the ambiguity under which they are placed by this particular law, should it become effective. It is not defined as to what their status would be in its present form. It is important for those who are in corporate form to be able to continue their business, to be licensed, to be represented, if it is mandatory that licensing exist. For example, corporations enter into contracts. Corporations advertise. These are things which might be precluded under existing phraseology. And rather than to enter into any more than this, I would like to say that this ambiguity should be clarified as well as what can be done with personnel who are brought in temporarily from out of state. We have several hundred people who travel, as you can imagine, around the country in various assignments, and if this law were to go into effect in its present state, we would be very perplexed as to how to behave, as you

can see. There are other corporations who have a very similar sort of problem. And this is the hat I am wearing in making this statement. If there are any questions in relation to this, I would be very pleased to answer them.

McMILLAN: You would be opposed to this.

MARSHALL: Taking off the hat as corporations, yes, sir, I feel that the legislation is something that has been debated for quite a long time in this field, and the basic problem is that legislation -- please, I have taken off the initial hat I wore when I say this -- that there are a number of areas that the legislation that has been proposed does not yet reach, and I think complications, more than simplification for the protection of the public would occur. I think one thing that has not been brought out is the public voluntarily uses these services, basically as advisory services, and the areas where they are compulsary are those that are put on by government agencies or by financial institutions, and these are not covered in this particular regulation.

McMILLAN: Thank you very much. Paul McCarron, do you wish to testify?

McCARRON: For the record again, my name is Paul N. McCarron, representing the California Real Estate Association. Mr. Chairman, as a point of information due to a question that you asked another witness, I thought this would be of interest to the Chairman, that a couple of months ago I was a guest at a meeting of the Board of Directors of the Los Angeles Realty Board, and in the course of conduct of their business on that day, a motion was made to admit an applicant as a realtor, to the Los Angeles Board, and the motion was carried, was passed. The motion was made by a man named Shattuck, and I thought that if the Chairman was interested in progress reports along that line, I was an eye witness, sir.

McMILLAN: Thank you. I was interested.

McCARRON: Coming more particularly to the bill before you, Assembly Bill 2341 on the licensing of appraisers, I would state this for your information, that when this bill was entered in the 1961 Session of the Legislature, the California Real Estate Association took a position in opposition to the bill, a position which they did not change. The calendaring of this bill before this committee came to our attention, probably also to yours only within a matter of recent weeks, and that was after the time when our Board of Directors had met and they will not meet again until January, and I cannot tell you what their position would be on this bill, except that I detect no groundswell anywhere in the association which would appreciably change in my opinion, their probable opposition to the bill. My guess in that direction is strengthened by the fact that just a couple of months ago there was a Senate Interim hearing on an appraisal bill, which possibly was the one referred to by Mr. Levering, although the one you studied may have been this one that is before us, but the Senate bill was a bill which dealt with certification rather than licensing of appraisers, and that certification ran to real estate appraising rather than all property appraising, and at the Gibson hearings on the Senate side, I believe it was Senate bill 848, they were given very extensive hearings. A number of people spoke. At any rate the California Real Estate Association which I represent did not go on record as favoring the Gibson bill either, and, as I say, it is a matter of voluntary certification, rather than mandatory licensing. I'm sorry if that is not a definitive report, but it is the best information which I can supply under the present state of my authorization.

LEVERING: Is that the end of your statement?

McCARRON: It is, sir.

LEVERING: Any questions? Well, thank you very much, Mr. McCarron. The next one is Mr. James V. Morgan. Is he here? Mr. William McCloy --

is he here? Will you come forward?

McCLOY: Mr. Chairman, at your request I have prepared a written statement which has been submitted to your committee. 15 copies, about a week ago. I would be pleased to read this statement to the committee or if you have already read it and are aware of the contents, I won't take the committee's time to do it. Whatever you prefer, I will be very happy to comply with your wishes, as you desire.

LEVERING: Just highlight it for us. We have it in the file.

McCLOY: My name is William M. McCloy. I am President of the General Appraisal Company which is a pioneer appraisal organization having some 14 offices in 7 states, 3 in the State of California, which is our headquarters, Los Angeles, California. The company has been in business 60 years, I have been in the appraisal business some 27 years with the General Appraisal Company. I am appearing to day as the President of the California Appraisers' Council, and wish to cover just a few points with you, essentially the purpose of the California Appraisers' Council and the scope of its membership, the number of appraisers in each of the major organizations which have a direct interest in appraising, together with an estimate of those who might be subject to a license or certification law if such is passed, a brief statement as to legislation effecting appraisers in other states, but that has been covered by a previous witness and is correct, and a few comments relative to Assembly Bill 2341 which we are considering today. I would like first to make my position clear that as President of the California Appraisers' Council, this organization, representing this organization, I do not have a positive statement pro or con to make to you on the desirability or otherwise on the bill. Personally I have my own ideas, but officially as the President, this organization is a fact finding organization, fact disseminating to the appraisers and to organizations such as yourself, to assist you in any problems that you might have in

this nature. We do not propose at any time to be a lobbying organization and that is not our purpose nor is it my purpose today to influence the committee one way or another. We have not taken -- completed a poll on whether the appraisers in the state generally feel legislation is desirable for their better interest or that of the public, but it is now in process and eventually this will be available.

McMILLAN: How many members are there in your association?

McCLOY: Approximately 1700 members, comprising physically 18 organizations in the state.

McMILLAN: Do they have to meet any qualifications to be eligible?

McCLOY: Yes, sir, they certainly do. I might briefly give those to you. The American Society of Appraisers which has been previously referred to, is the one organization which embraces all classifications of appraisers, personal property as well as real property. In our organization we have the largest, which is the Los Angeles chapter, Santa Barbara chapter, San Francisco and San Jose chapters, and we have various stages of membership, beginning with a member, senior member, and associate -- those who are interested but not practising appraising, such as condemnation attorneys and so on. All have to pass written examinations to reach the grade of senior member, reviewed by the Washington board, in Washington D.C., which sits in session frequently to review the qualifications.

McMILLAN: Are they all real estate appraisers?

McCLOY: No, sir, the American Society of Appraisers embraces all factors, the personal property as well as real estate, and they are qualified in specific branches which they claim to be experts in, and they are examined in those particular fields in which they claim qualifications, and receive a certification from the chapter, and the designation and permission to use the initials, ASA, or American Society of Appraiser after their name. The American Institute of

Appraisers has been previously referred to as an organization, a subsidiary of the National Association of Real Estate Boards, and to belong to that organization as was stated, takes five years to make it. A member must be a member of a local realty board, and a dues paying member to the national organization, then he become a candidate. He has to have the number of years necessary; he has to pass two strict examinations, and he has to submit the sample appraisal, just as we do in the American Society of Appraisers, so there is quite a strict control through self-regulation of appraisers.

McMILLAN: Do you exercise any control over your members?

McCLOY: Yes, sir, we do our best to influence them to do the right thing as far as ethical practices are concerned. We have a strong code of ethics.

McMILLAN: Do you discipline any of your members?

McCLOY: We discipline them in the best way we can, by refusing to permit them to renew their membership in the case of violations, and there are a number in our society who have, not a large number, but a number who haven't been able to continue their membership because of areas where perhaps we questioned their practices and their ethics, but they certainly have been in the very minority group, and it is difficult to pin a person down on unethical practices in the appraisal profession because of the very nebulous nature. For example, a person in court, two appraisers in court, can reach different conclusions of value, one high and one low, and which one is not telling the truth -- it is an opinion and you can't discipline a man for his opinion. And that is our big problem in the appraisal profession. We get sued for liable, defamation of character and everything else, because we say the man is not ethical or proper in his practice, and you attempt to prove it, when a man gives his opinion, it is very, very difficult.

McMILLAN: Did you state the basic qualifications for membership

in your organization?

McCLOY: My organization, the American Society of Appraisers, is 25 years of age. Passage by an examination in the Los Angeles chapter of the American Society of Appraisers, a written examination, and an oral examination by a board of appraisers in the field where he professes to be an expert. Then he has to be a member a year or two years, I have forgotten, before he can be qualified for a senior member classification. He has two steps before he can make senior member. He can't use the word ASA after his name until he is a senior member. He carries no endorsement by the chapter just by being a member. There is a trial period.

McMILLAN: Any questions from the committee? Thank you very much, Mr. McCloy, for appearing. Is Mr. Morgan here? Mr. Robert Tully?

TULLY: I am here, sir, but did not request to appear. I have no statement to make.

McMILLAN: All right. Mr. Henry Babcock? Do you want to make a statement?

BABCOCK: My name is Henry A. Babcock. I have an office in Los Angeles, California. I am a consulting engineer, evaluator and a real estate consultant. I am also a registered professional engineer in the State of California, and with your permission, I would like to read you a short letter from the international president of the American Society of Appraisers. I have copies. This was addressed to me under date of November 16, 1962.

Dear Mr. Babcock:

> Many thanks for your letter of November 13th, advising me that there is to be a legislative committee hearing on the proposed Assembly Bill pertaining to licensing of Appraisers. I would greatly appreciate it if you, as a representative of the American Society of Appraisers, would attend this meeting and clearly set forth the views of our membership.
>
> As you well know, the position of our Society is that of a firm stand against licensing or certifying Appraisers. This is also the feeling of the other appraisal organizations that voiced their

opinions at the recent meeting (November 10th through 12th) of the National Association of Real Estate Boards held in Detroit.

Our Society, in conjunction with the other appraisal organizations, has agreed on a model legislative bill, that would set forth the minimum requirements that should be considered by any State adopting such legislation. It should be clearly understood that the provisions set forth in this suggested proposal are not what the appraisal profession is "trying to promote" in support of licensing, but rather they are the minimum requirements that should be considered by any State legislative group when contemplating adoption of any legislation pertaining to this topic. What our Society is trying to promote is "EDUCATION" not LEGISLATION!

Unless the professional requirements for a "licensed or certified" Appraiser are as high or higher than those now required by the various appraisal societies, the Appraisal Profession will have received a severe setback in its effort to see that only fully qualified appraisers are given the responsibility of properly representing the interest of the general public. It is my firm belief that it would be exceedingly difficult for every State of any State to establish a "regulating" or "governing" commission that could adequately supervise the conduct and professional standards of "certified or licensed" appraisers. Currently such controls are being rigidly enforced and uniformly handled through the national offices of our various Societies.

It is my personal opinion, that if "licensing" or "certification" of appraisers is approved it will be a means of rubber stamping an "implied" approval on persons who may not be professionally or ethically qualified to render such specialized services. The licensing of professionally unqualified individuals, who are not subject to the supervision of a recognized Society, would certainly lead to a lowering of the standards of the Appraisal Profession and could work an unnecessary hardship on the countless citizens who rely on the ability and ethics of the Professional Appraiser.

Briefly, these are the thoughts of the Board of Governors of our Society; and you have my permission to present them to the Assembly Committee for their consideration.

With best personal regards, I remain

Sincerely yours,

Alexander P. Grice, III

who is the international president of the American Society of Appraisers. I will be happy to answer any questions.

McMILLAN: Any question? All right, I guess there are no questions, Mr. Babcock. Thank you for appearing. Now we are going to take up the subject of the subdivision map act. Tony Kennedy. Mr. Kennedy, would you mind waiting just a minute. Someone else wants to be heard on the appraisers. Who is Mr. Ware? Do you wish to be heard on this? I

didn't know you wanted to be heard. If you are here, come on up. Give your name and whom you represent.

WARE: I am William E. Ware. I represent the Legislative Committee of the California Society of Certified Public Accountants. The only question we have involved in this bill is a possible confusion by using the word "certified" in the licensing of appraisers, because of the present act for certified public accountants. In other words, we have no question or objection to the bill as to licensing of real estate appraisers, but we do object to the term "certified".

McMILLAN: Why? Have you got a corner on that word?

WARE: The Board of Accountancy has been in existence since 1901, and the title "Certified Public Accountant" has always been used as our title.

McMILLAN: We just certified the psychologists.

WARE: In other words, you would get the confusion of initials -- CPA -- so we are suggesting, perhaps, the use of the word "licensed" instead of "certified" in this particular aspect of the bill, so as not to confuse the public.

McMILLAN: I see. Thank you. Now, Mr. Kennedy.

KENNEDY: Mr. Chairman and members of the committee, my name is Anthony Kennedy. I am an attorney in Sacramento, California, and I am appearing here today for the California Council for Civil Engineers and Land Surveyers. Their interest before this committee is to have adopted for the subdivision map act, certain clarifying amendments that will assist in having a more easily managed conveyance, handling of conveyances by deeds in the State of California. We have filed a written statement and without reading it in its entirety, I would like to generally brief it which is to the effect that the group I represent probably do 90% of the map and subdivision work for realtors and private individuals in the state. Thus it falls upon them at all times the obligation of seeing

that a map is prepared accurately for filing relating to the physical work, the determination of boundaries, and also they are required to make, often, the legal determination as to whether or not a particular project or mapping required comes within the terms of the real estate act or subdivision map act requiring other and different maps that are record of survey. Because of certain confusions in the map act, the subdivision map act, they are making recommendations for changes, all of which are matters of clarification and to avoid some of the present confusion, and it is their intent that they do not desire in any way to transgress in any way whatsoever upon the functions of the Real Estate Commissioner, nor the province of the real estate dealers, nor the rights of local governing boards, but to try to have some administrative provisions or to have accurate provisions in the subdivision map act that will coincide with the land surveyors law, so as to render conveyancing better and more accurate, and also in the general public interest. To do this the main provisions that have been amended are Section 11535. A copy of the amendments which we have suggested are enclosed showing in strike-out form, and by emphasis, underlining, the omitted material and the new material. There are two corrections in the suggested amendment to 11535, to make it conform to the statement that I have made that all strike-out is shown in strike-out form and new material is underlined. On page 1 of the amendment to Section 11535 in paragraph (2), the language reads "Any parcel or parcels divided into lots or parcels, each of a net area of 20 acres or more, to be sold or leased for agricultural", there should be inserted between the words "for" and"agricultural", the word "Commercial" and strike out. On page 2 of the suggested amendment to Section 11535, paragraph (4) and (5) are both new matter, part of it revision, some of it entirely new, and all should be underlined.

In addition to the statement that you have before you,

Mr. Harold Barnett has prepared a statement based upon the summary that is furnished to the members of the committee, which he will furnish. Mr. Walter Hanna, a civil engineer of Santa Clara County, and Chairman of the Legislative Committee of our organization, will explain briefly the gist of the amendments, with the intent of showing that the amendments are designed, as I said before, to try to bring harmonization, if there is such a word, of the provisions of the Real Estate Act, the Subdivision Map Act, and also the Surveyors' Act. Mr. Hanna.

HANNA: This whole problem, I believe, revolves around, in general, around the things that are an exclusion to the -- generally considered exclusions to the map act, and I don't believe we have too much problem with the things that are specifically covered, as a subdivision, by the map act. It seems to be working fairly well, when it is a clear-cut case, that you have five or more lots and they are definitely a subdivision under the map act, and also under any local ordinances and they go through the governing agency and advisory agency of the local municipality. These provisions seem to be working pretty good. The problems come in these exclusions, and also, I have found in my years of practice, one of the things that causes us a great deal of trouble and causes the public trouble, is confusion in the law. For instance, Section 11,000 of the code, which is the subdivided lands law, which is your enforcement code, the definition of subdivision is defined as, when a parcel of land is divided into five or more lots. In the map act, we have added the words "in any one year period" so that here we have two different laws on the same thing. One is the law in the map act that governs when and where you will record a map on a subdivision, and the other one is one that a man can be prosecuted under, the enforcement act. The two definitions are not the same. So a man can go to his attorney or someone and he will look up the subdivision act and say he is not in

violation, and on the other hand he is in violation of the map act that they might not have looked at or been aware of. And then you immediately run into the problem of the local agency. He is off on the wrong foot as a violator, and he may not have intended to, at all. So we propose in 11535 to take out -- this will make the act a little more stringent, actually, but we will take out the provision of "within any one year period" in the map act. And this will make it agree with the definition of subdivision for enforcement purposes in Section 11,000. I think that this is a good move, in the two codes. The basic definition of the subdivision will be the same, and it will close this loophole there. I think one of the troublesome things we have is the person that deliberately starts out to violate and uses this one year provision as a gimmick. He's going to sell four this year, and he is going to sell four next year, and so on down the line, when he really starts out with the intention to subdivide. And I don't think any of us want in any way to protect the man that intends to violate when he starts out. I know there are lots of people who get that way unintentionally, they start out and they are only going to do a little bit, and conditions change, and then they find that they are in trouble. So we feel that this is a good move, and then there was a lot of confusing language added after that in the map act, that we have broken down into a new paragraph, instead of these continuous long sentences with so much language in them that we propose to put this into specific sentences which state just exactly what they should mean. Number 2, that we have here, where we say "This chapter shall not apply in the situation where property consisting of a single numbered or otherwise designated lot shown on a recorded map, or where an individual parcel of land described in a recorded conveyance, is divided into no more than four parcels for the purpose of sale or lease" -- this is because in the present law, this parcel of land is described as being a contiguous unit, and it could

have been several legal parcels of land acquired at different times by an owner. He acquires it this way, and he cannot sell it in the same form he acquired it in, as a parcel of land. What we hope to do is to come up with a definition that will allow the parcel of land to stand as he acquired it, under the same conveyance, for the purpose of interpreting the subdivision act.

McMILLAN: Are you submitting some prepared amendments to the Map Act?

HANNA: Yes, sir.

McMILLAN: Do we have them here? I have explanation of amendments -- I guess that's it.

HANNA: The amendments are right ahead of the explanation, on letter sized paper. We have gone into 11535 (d) where we come to the exclusions under which the record of survey map is required to be filed. In other words, these are not subdivisions, and this is where so much confusion is in our present law, exclusions. The old one contained a lot of language which we have put under new paragraph 4 with some changes, and under the present (1) we have simply put "Any parcel or parcels of land divided by judicial decree." We have people across the state in our membership that have had trouble in recording maps of court partitions, where the division of land is done by the court. The decree of distribution on an estate, where there are six or seven parcels of land created by the decree of distribution. This has been done by the decree, and we have had the recorder and the county surveyor refuse to record the map, and we have gone out and simply put on the ground what the court has already decreed. So we think that there should be a simple provision in the law for the filing of a record of survey map for this type of division. This is not a division that comes before advisory agency in any way or form, it's already an accomplished fact.

Number (2) -- this is an amendment to the present law, some change

in the language -- "Any parcel or parcels divided into lots or parcels, each of a net area of 20 acres or more, to be sold or leased for agricultural," -- the present law says "commercial agricultural" and we feel that this is pretty hard to determine. We feel pretty much that any agricultural work could be commercial, but there are all degrees of it, and agricultural is a pretty good definition in itself. In our meetings, you can get ten people together and no one has the same idea of what it is, and we feel that the simple definition of agricultural is better. You are talking of 20 acre parcels of land, so that we have added the words "residential or recreational purposes." This is due to some of the problems that we have in mountain areas where people have a large parcel of land that is simply for a mountain cabin or this type of development.

WILLIAMSON: Does this, then, permit the person who has some large mountain acreage who wants to lease it out for grazing purposes, and where there is no regular road and the access to which may be just part of the lease agreement he would have -- would he be permitted now under these provisions to do this?

HANNA: Yes. Now, this -- I'll be quite honest with you, we have anticipated some difficulties with this particular change. It is slightly less restrictive than the present law, but we feel because of the large acreage requirement in it, that it is a fair provision for the people that are in the outlying areas. This wouldn't apply in your Orange County and your closely built up areas, anyway. But the real change in here is the strikeout on the end of the paragraph, where the present law requires the lot design to meet the approval of the governing body. We feel that this has been very unduly restrictive to people in just exactly the purposes you mentioned -- the large acreage type of development where there is really -- it is a waste of everybody's time and money to get this thing into the governing body. A man may

have 200 acres and want to cut it up into four 50-acre parcels, and he still has to take it to the planning commission and go through all this rigamarole and he may be required to spend money on it, ridiculous under the circumstances, and we feel that this would be a very equitable provision and we do put an access requirement in it, that they cannot sell a land-locked parcel of land or break it up that way.

BRADLEY: What would be a 20 acre residential development? A big hotel, dude ranch --

HANNA: Yes. For instance, my partner and I just bought 160 acres up back of Mariposa, and we might want to break it up into five pieces, and sell each one of them just for a single, privacy homes -- that type of thing. There's a public road right along the border of the thing, and there are people that want this type of thing. They want a rustic setting, and they should have legal access to this property.

BRADLEY: As you say, it would be in 99 cases out of a 100, restricted to a mountainous or recreational area.

HANNA: Well, we have had the situation, for instance down in San Diego county, where under the present law, you couldn't break up a piece of 100 acres of flat farm land for farming purposes, without going to the planning commission, under the present law.

Then we come to our number (3), some changes -- all new language, then, that any parcel or parcels divided into lots or parcels, each of a net area of 6 acres or more, to be sold or leased, each of which abuts upon or has legal and permanent access to an improved public street or highway, and which lots or parcels have been approved by the local advisory agency or the governing body. Here we are coming down to a smaller acreage division, and adding the provision that it has to be approved by the governing body. Where you draw the line on this acreage thing, of course, is always a problem. I will be quite honest, where the 6 acres came from is so that the ten acre parcels out in the

desert here can't be broken into two five acre parcels. The five acres was considered, but using the six acres as a minimum would tend to head off some of the poorer division that has been made out in that area. And it does put it under the control of the local advisory agencies for the development.

Then number (4) is where we have taken the language from the old number one and put it into new language. This is a pure exclusion that we have tried to make a positive statement of what is not a subdivision, and here we are quite honestly and frankly normally talking about the small parcels of land.

McMILLAN: Mr. Miller has a question.

MILLER: Mr. Hanna, that six acre figure that you gave us a moment ago -- how would that veer, if at all, on the 20 acre waiver in the subdivision act? Would it modify the 20 acre waiver?

HANNA: No, I would say it is another condition entirely.

MILLER: It wouldn't have any effect whatsoever on this.

HANNA: I don't think so. One, it would have to be 20 acres or more, and if it is under 20 acres when it is divided into more than four parcels, it would come under the 6 acre thing.

MILLER: Thank you.

HANNA: Under this number (4), any parcel or parcels of land in which all of the following conditions apply: (i) No more than four parcels or lots are created by the division. We put this in -- it seems simple, but it is a positive statement conforming with the definition of subdivision. In other words, five becomes a subdivision, and this statement would make a positive statement of it. (ii) All lots or parcels created front on a publicly maintained street or highway, and (iii) The design of the lots or parcels created conforms to the requirements of any applicable local zoning ordinance insofar as frontage, depth and area are concerned. In other words, we are saying here that

a man that wants to divide his property that fronts on a public street or road in four pieces, if the county or city has a zoning ordinance that sets up a minimum area for their lots or minimum frontage depth relationship which some of the ordinances do, if his division conforms with that, he can file a record of survey map on four parcels without going to the advisory agency. I might mention in connection with this, and I am sure you are all aware of it, but the map act there has the basic provision in it that nothing in the act prohibits the local agency from having local ordinances that are more restrictive. But this would be very helpful in many of our fringe areas and would have no effect in our heavily urban areas, I don't think, because their local ordinances are already about as restrictive as you can get. Then we added number (5) -- Any single parcel or lot created that does not front on a publicly maintained street or highway, containing a net area of one acre or more, and having permanent and legal access to a publicly maintained street or highway, said access not in conflict with any officially adopted, applicable city or county street or highway plan. This is to provide for the sale of the single building site that we run into very often, a very desirable site, and a man wants to sell it with a private easement to it, the single parcel, and we think there should be a provision in the law for this, so that the -- this could not be done if it is not added to the act, with the definitions we have coming up, with this other exclusion, because of the access requirement and the acreage requirements we stated up above.

BRADLEY: Do I understand that 4 and 5 are new language?

HANNA: Yes, sir.

BRADLEY: It should be underlined.

HANNA: Yes, those should be underlined, that's right. Then we provide in (c) that in cases provided in subsection (3), (b) (3) of this section, a tentative map shall be submitted to the governing body, and

I won't go on and read the rest of the language. This is the one of the six acres where approval by the governing body is required.

MILLER: Mr. Hanna, I don't think the Chairman has number 5. He has number 4. His copy doesn't give number 5.

KENNEDY: We had to revise that. I have additional copies. We revised this and we called, and your secretary very graciously made the insertions, on the drafts. I am furnishing additional copies of the revisions.

HANNA: Section (c) provides for the tentative map to be filed with the governing body, in the one case, and in all cases requires that a record of survey map be filed in any case of exclusions here, must be filed. Then in (d), this is some new language added to the present law, which now states that nothing contained in this chapter shall apply to land dedicated for cemetery purposes under the Health and Safety Code of the State of California, and we are adding, "providing a Record of Survey Map is filed delineating the exterior boundary of the land to be so dedicated." We would expect that there might be some opposition to this from the cemetery associations. We feel that it is in the public interest, at least the boundaries of a piece of land that a cemetery is to be put on should be determined to some degree of accuracy. At the present time there is no provision in the law at all, other than a map be prepared of a cemetery, and this is done by plotting, and we know of instances where the exterior boundaries of the property were not anything like the -- physically nothing like the deed that was plotted up to draw the map from. I happened just in the last few days in my practice to run on to one where the new street goes by the cemetery and there is quite a bunch of feet sticking out in the street. We really feel that the code should go further and provide in the cemetery act for a subdivision map of the cemetery, but we don't think we can go that far, but we do think they can at least start with a mathematically correct

so the amount
boundary, / of land they intend to divide into lots for cemetery purposes is all there. Then we have the standard clause there that nothing shall in any way effect the provisions of Section 11,000 of this code, which is the real estate subdivided lands law.

Now, Mr. Kennedy's statement has explanations in writing following, explaining these things also.

KENNEDY: Mr. Chairman and members of the committee, I should have informed you initially that copies of this suggested revision were sent to the office of the Real Estate Commissioner, the representative of the Title Insurance Companies, to the representative of the Real Estate Board. Meetings were held with the county recorders and the county engineers, with members of our organization, to attempt to chart out these provisions. A great deal of time has been spent by members of our association and these other public officials.

McMILLAN: Did you get together with them?

KENNEDY: We did with the county engineers and the county recorders still have it under advisement. We have not heard from the real estate commissioner, nor have we heard from the title companies, and Mr. McCarron today expressed some question as to whether or not his group desired to take it under advisement. So, in specific answer to your question, I can't say that anyone except the county engineers, has agreed to the revision.

McMILLAN: Are you hoping to come up with something that you are all agreed upon by the first of the year, probably?

KENNEDY: Well, we believe that these revisions, with some modifications, should be in the law, because they are in the interest of the public. It cuts down the cost of conveyancing. It makes it certain, when you do have to file a subdivision map, so that the public and the title companies may know whether it does have to be filed and it takes away the uncertainty. At present in the law there are so many vague

areas in the law that you do not know what you should comply with or what you should not comply with, with the net result that it goes before the planning commissioners and others who decide upon these things, by the governing body, and your maps are held up sometimes for a period of two or three or four months, with generally the administrative determination that inasmuch as we are not sure, we'll make you file a subdivision map anyway, thus causing a lot of expense to the public who are only interested in getting the title.

HANNA: I might state, Mr. Chairman, our feeling in the general statement that whatever definition used, definitions should eventually be arrived at where we have a definition of subdivision that anyone can read and understand, and that the exclusions are clear-cut and concise and they are definitely exclusions, because if they are an exclusion, a man can call his engineer and surveyor and have it surveyed and have a record of survey map recorded without being harrassed by a planning commission or city council or board of supervisors, where, whatever it is. As I stated earlier, we are not here to aid any violators. We do feel that there must be some way to get these definitions so written so that everybody has the same idea of what is a subdivision and what isn't. The ones that aren't, let's set them aside, and make it easy for the person to do it, and not be harrassed in the doing so. I might further add that by so doing, if we do go through the legislature with these amendments and something in this form is passed, there is a necessity some amendments to the land surveyors' act to harmonize with these changes will be required. We don't want to have anything to do with the real estate end of the thing, because they get into many fields of land transfer and finance and things that we don't. But we do think that the basic definition should agree.

KENNEDY: I would like to add one more word for the members of the committee. It may well be that there will be a great deal of criticism

to subdivision (3) where it reduces, where the acreage is six acres. We desire to go on record before the committee that we are not insistent upon this. This is a matter of legislative determination. We have included the six acres because it is fair, but actually it is somewhat beyond our province, because it does not relate particularly to the duties of the civil engineer and the land surveyor. It is a substantive change where we have included it only because of expressions of county engineers and others who are interested in the general problem, and it has been included only for that reason. We would not support it if there were opposition.

HANNA: I might add, in that connection, that one of the reasons for this proposed addition to the law is the situation where, I know that Mr. Barnett has had himself, where he had a large industrial development where there was no problem with the governing agency whatsoever -- they were agreed on putting in all the improvements, paving the streets and everything else, but it was not known in what size the lots would be. To start with there was a street through the middle of the development, and a large block of land on each side. It was a subdivision, but they wanted to be able to sell it off in different sizes by meets and bounds descriptions, perhaps, depending on who the buyer or lessee of the property turned out to be, and it is sort of difficult to file a subdivision map on this kind of property, laying out lots when you really don't know what your eventual market is going to be, but putting this provision in here allows for the cut up of the land and putting the streets in and the necessary utilities on a record of survey map, and then allowing for the parcels to be sold out later with all the improvements in to the required standards of the governing body.

KENNEDY: I believe that is all we have on that particular section

of the act. The other section we desire to have amended is Section 11592. The amendment to this section has been suggested by the county engineers and county surveyors. The circumstances which give rise to the suggested amendment are that at the present time the law provides that where a subdivision map is filed, that the exterior monuments shall be placed, but that the interior monuments need not be placed at that time, but must be placed at a later date, and a bond posted so that to assure the posting of those monuments by the civil engineers who file the map. The amendment merely provides that in the event the disability for any reason of the original, or the engineer or surveyor who originally filed the map, that the county board of supervisors or the governing body may designate some other civil engineer or surveyor to fix the monuments, who shall be paid from the funds.

McMILLAN: Does that conclude your presentation?

KENNEDY: We have one other matter that we would like to draw to the attention of the committee. That is that there are certain amendments that have not been given to you but I will supplement my oral statement here today with a written statement for each member of the committee and the committee technical staff, that the provisions of the land surveyor's act should be revised to strike out the reference to place on the certificate of survey, correction, place upon the record of survey, in a certificate that it is not a subdivision. That should be -- it is merely a matter, again, of harmonizing again the various divisions of the act, because of the inconsistencies.

HANNA: I might make one statement. The point of why we are so concerned with the exclusion part of the law is basically because the exclusion part of the law gets involved with the land surveyors' act and not the subdivision map act. And here we have a peculiar situation. The law makes it incumbent upon the surveyor or the civil engineer to record a map, if he has done a certain piece of work, and it is a state

law that he is complying with, not the local law. We have a state law that governs the acts of surveyors, and under certain conditions in the law, we are required to record a map, and this has nothing to do with the subdivider or developer or anyone else, and we don't feel that the local agency should be required to establish different conditions that harrass us in doing this work. Subdivisions, fine. This is a different procedure entirely. There is somebody else involved in this that is required to do certain things. But in making these surveys, under these exclusions in the map act, they require a record of survey map be filed. This record of survey map is provided for in the land surveyors' act, and we want these definitions to the point that we can advise these clients when they come in that here is the law, this is what we have to do, and when we give the man an estimate of the cost for the work, we should have some degree of assurance that this is all we have to do. Now, if this isn't the way the law is going to work, I think we should get down to the point that everything is a subdivision, and we will so tell them, and let's work that way.

WILLIAMSON: Mr. Hanna, as I recall, either in 1959 or 1961 we enacted some changes, I believe, to section 11535 at the request, I believe, of the Public Works Director in Fresno County, and there were some problems that were created by what we did at that time that set some of the people down in Kern County on their ear.

HANNA: From Kern County to the Oregon border.

WILLIAMSON: Do these amendments that you are suggesting here -- do they deal with those problems adequately, do you feel?

HANNA: Yes, I believe they do. I think the biggest thing done there, if these amendments are acceptable and become law, it would provide for this person with the large parcels of 20 acres and over, that he can do just about what he will, without going to the planning commission and governing body, as long as he provides access to each

parcel of land, it is legal, and he records a record of survey map. I believe that this solves the problem.

WILLIAMSON: That would be the concern I had.

HANNA: There is a great deal of concern over that change in the law. It came up and got by, I think, last session, without anybody realizing the full implications of it, as things do sometimes. Though we do have the urban areas in the state that have hideous problems in their land development, and I am in full sympathy with them. We certainly have a great deal of this state that is purely rural, thank God, and we hope a lot of it will stay that way, and it becomes unduly restrictive, and under the present law even the local governing body can't do anything different. It makes it very difficult, even when they want to, to let the person with large parcels of land go ahead and do something reasonable with it.

McMILLAN: Does that conclude your presentation? I think that is the last subject. Wait a minute -- did you want to make a presentation? All right, come forward.

CALLAHAN: My name is Frank Callahan, representing the Home Builders' Council. We just had an opportunity as of this morning to briefly review Mr. Kennedy's presentation and I would like, for the record, to indicate our willingness to sit down and meet with his organization. I think there are some things in here that possibly the subdividers won't be too happy with and maybe we can work the differences out. Thank you.

McMILLAN: Thank you. I would like to make a short statement. This concludes the agenda of this committee, and I think this will be the last meeting of the GE & E Committee this year. I would like at this time to express, as Chairman of the Committee, my personal appreciation to two members who will not be with us next year. Harold Levering is retiring and he has served many years on this committee, and I want to say as Chairman, Harold, that we are going to miss you

a lot. You and Clark Bradley -- Clark is going to the Senate, and will no longer be with the committee. If I am reappointed Chairman, I am certainly going to miss two very loyal and faithful members. Never have I called a meeting when these members haven't been there right on time, and served until the bitter end every day, and I do appreciate your service on this committee, and I want to tell you that I am going to miss your presence here next year, if I am Chairman of the Committee. (Applause) If there is nothing further, today, we will stand adjourned.

BRADLEY: Mr. Chairman, let the record show that I, for one, and I am sure Harold Levering joins with me, have enjoyed our term of service on this committee, particularly under your chairmanship.

McMILLAN: Thank you.

LEVERING: We feel that you have handled the committee fairly and on a non-partisan basis and we appreciate the way you have handled it.

McMILLAN: I'm not denying the faithful service of the other members of this committee, too. I just want you to know we are going to miss you.

(Committee Adjourned)